

IN THE UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF TEXAS

EL PASO DIVISION

VOLUME 14 Of 20

UNITED STATES OF AMERICA

EP:13-CR-0370-DG

v.

EL PASO, TEXAS

MARCO ANTONIO DELGADO

September 16, 2016

**STATEMENT OF FACTS**

THE HONORABLE DAVID C. GUADERRAMA  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Government: Debra Kanof  
Anna Arreola  
Luis Gonzalez  
Assistant United States Attorney  
700 East San Antonio, Suite 200  
El Paso, Texas 79901

For the Defendant: Maureen Franco  
Erik Hanshew  
Assistant Federal Public Defender  
700 E. San Antonio, Suite 410  
El Paso, Texas 79901

Court Reporter: Kathleen A. Supnet  
El Paso, Texas  
(915) 834-0573  
kathi.supnet5303@gmail.com

Proceedings reported by mechanical stenography,  
transcript produced by computer-aided software and computer.

KATHLEEN A. SUPNET, CSR

## CHRONOLOGICAL INDEX

VOLUME 14 OF 20

|  |               |              |                  |             |
|--|---------------|--------------|------------------|-------------|
| September 16, 2016                       |               |              | PAGE             | VOL.        |
| GOVERNMENT'S                             |               |              |                  |             |
| <u>WITNESS TESTIMONY</u>                 | <u>DIRECT</u> | <u>CROSS</u> | <u>VOIR DIRE</u> | <u>VOL.</u> |
| PONCE, HECTOR                            | 3,70          | 23,79        | --               | 14          |
| BROWN, JENNIFER                          | 80            | --           | --               | 14          |
| LECENSE, KENNETH                         | 87            | --           | --               | 14          |
| GLIVA, JOSEPH                            | 94            | --           | --               | 14          |
| MEDLOCK, LINDA                           | 103           | 160          | --               | 14          |
| NARVAEZ, LILIANA                         | 167           | 209          | --               | 14          |
| MILLER, MACE                             | 212           | --           | --               | 14          |
| Court Reporter's Certification . . . . . |               |              | 277              | 14          |

1 (Open court. Defendant and counsel present.)

2 (Jury present.)

3 THE COURT: Let the record reflect that all members of  
4 the jury are present, the United States through its assistant  
5 United State's attorneys are present, the defendant and his  
6 attorney is present.

7 HECTOR PONCE,

8 DIRECT EXAMINATION CONTINUED BY THE GOVERNMENT

9 BY MS. ARREOLA:

10 Q. Good morning, Mr. Ponce. When we broke yesterday, we were  
11 asking -- I was asking you about the amount of payments that  
12 were due to F.G.G. under the prime contract and the amounts of  
13 those payments. And I'm going to resume where we left off.

14 I'd like to you take a look at what is already in  
15 evidence as Government's Exhibit 19 and tell me if you recognize  
16 this document. And I'm going to show you the Spanish first and  
17 then I'm going to show the translation.

18 A. Okay.

19 Q. Do you recognize this document?

20 A. Yes.

21 Q. Okay. And what does this look like to you?

22 A. It looks like the Annex, which was one of the attachments  
23 of the prime contract, that is the contract between C.F.E. and  
24 F.G.G., stating what the payment terms would be, that is each  
25 progress payment and the date in which they would be paid.

1 Q. So I'm going to pull up the English translation already in  
2 evidence as Government Exhibit 19A.

3 Under Annex S., were the first two payments due to  
4 F.G.G. 20 million and then \$12 million, respectively?

5 A. That is what's written there, yes.

6 Q. Okay. So I'm going to go back to the exhibit that we  
7 looked at yesterday before we broke, which was Government  
8 Exhibit Number 47 which is already in evidence.

9 Do you recall that -- do you recall seeing this e-mail  
10 yesterday?

11 A. Yes.

12 Q. And this is an e-mail from Mr. Delgado to you dated March  
13 12th?

14 A. Correct.

15 Q. And in this e-mail, he was forwarding an e-mail from  
16 somebody who appeared to be at C.F.E.?

17 A. Correct.

18 Q. And was there a chart attached to this e-mail?

19 A. The chart you are showing, yes.

20 Q. Okay. So we're going to go ahead and open up the English  
21 version.

22 When you received this e-mail, did you know what this  
23 chart was?

24 A. When I received the e-mail, I did not know what the chart  
25 was. I didn't.

1 Q. Okay. And did you speak with Mr. Delgado about it after he  
2 sent it to you?

3 A. I believe we spoke sometime after he had sent it to me,  
4 yes.

5 Q. Was that over the phone?

6 A. Yes.

7 Q. And what did he say to you and what did you say to him?

8 A. I -- well, the first thing that he did was to explain to me  
9 that he was sending this because the C.F.E. wanted to change the  
10 payment terms and that his specific question to me was would we  
11 prefer Option A or Option B with respect to how those options  
12 would affect the amount paid to Mitsubishi.

13 And my response was, we except neither. You know, our  
14 price and our payment terms are in our proposal to you and this  
15 is -- this is not acceptable to us.

16 Q. And did he say why C.F.E. wanted to reduce the amount of  
17 the first payment?

18 A. I believe the explanation was that the -- that the amounts  
19 or the percentages were being reduced because C.F.E. was  
20 considering accelerating the schedule of the project, which also  
21 means accelerating our delivery of the equipment, and if they  
22 were to pay earlier then they wanted to pay less, because that's  
23 how they would manage their cash flow, that was my  
24 understanding.

25 Q. Let's take a look at Option A and Option B. First, let's

1 look at the first column. It says price offered \$121 million.

2 What does that number represent?

3 A. I believe it represents what the -- what F.G.G. had offered  
4 to the client as the price of the equipment.

5 Q. And who was the client?

6 A. C.F.E., Comisión Federal de Electricidad de Mexico.

7 Q. Okay. Under this first column this says payment and it  
8 says 20 and 12. What do those numbers represent?

9 A. Those are the -- that's the amount that C.F.E. would pay  
10 under their contract with F.G.G. at the time of the first  
11 payment, which was as you see on the left two months after the  
12 signing of their contract, and the 12 would be the second  
13 payment, six months after signing of the contract.

14 Q. And do those numbers 20 and 12 match the numbers that we  
15 saw in Annex S?

16 A. A moment ago we saw 20 and 12 there, yes.

17 Q. Okay. So under Option A, what was the amount going to be  
18 of the first two payments?

19 A. Under Option A, it would 15 instead of 20 and 7 instead of  
20 12.

21 Q. Okay. And under Option B, what were the amounts going to  
22 be on the first two payments.

23 A. It would be 10 million instead of the first 20 and 10  
24 million instead of the first 12.

25 Q. And so did Marco Delgado tell you that the amounts were

1 going to go from 20 to 15 or from 20 to 10?

2 A. Yes, that was the explanation.

3 Q. Okay. And what was the date of this e-mail?

4 A. It was March 12th, 2010.

5 Q. I'm going to now show you Government Exhibit 2. I'm going  
6 to ask you to remember that date, March 12, 2010.

7 A. Okay.

8 Q. And I'm going to highlight a line item for the jury and I'm  
9 going to read this and ask you a question. March 9th,  
10 2009 [sic], fideicomiso amount of incoming wire transfers \$20  
11 million.

12 THE COURT: What was the date?

13 MR. ARREOLA: March 9th, Your Honor.

14 THE COURT: 2000 --

15 MR. ARREOLA: 10.

16 THE COURT: Thank you.

17 BY MS. ARREOLA:

18 Q. I'm going to go back to the exhibit we just looked at,  
19 Exhibit 47. When Marco Delgado sent you this e-mail on  
20 March 12th, 2010, did you know that he had already received  
21 \$20 million from C.F.E. into an offshore account in the Turks  
22 and Caicos Islands?

23 A. No, I did not know that.

24 Q. Now after you got this chart from Marco Delgado, what  
25 happened next?

1 A. If I remember correctly, I sent one communication in  
2 writing, an e-mail which said that this -- these options are not  
3 acceptable to us and probably stated a couple of points  
4 explaining why it was not acceptable. And I don't remember if I  
5 got a reply to it, but I did send a communication saying not  
6 acceptable.

7 Q. Okay. Did you have any meetings with Mr. Delgado after you  
8 received this e-mail?

9 A. Um, there may have been one or two conversations going back  
10 and forth, but the ultimate decision was that we should have a  
11 meeting face-to-face, the parties, to discuss what was going on  
12 here and to resolve it.

13 Q. Okay.

14 A. And we did have a meeting in Orlando, Florida, to discuss  
15 the issue.

16 Q. And who went to the meeting in Orlando, Florida?

17 A. Three companies, were Mitsubishi Power Systems, including  
18 myself as their consultant, T.A.I., Mr. Rick Williamson was  
19 there if I remember correctly and Fernando Gireud of F.G.G. I  
20 believe Mr. Mace Miller was there, but I don't remember  
21 specifically and Marco Delgado was there.

22 Q. And what did Mr. Delgado say, do you recall, at this  
23 meeting?

24 A. Among many things said, the most important thing was his  
25 explanation as to why the payment terms were changing. And he



1 said that C.F.E. wanted the changes and they wanted their cash  
2 flow to be correct and the schedule was being considered for  
3 acceleration. And also the grand total of the payments at the  
4 bottom, instead of the 121 million, had been reduced to 106  
5 million, and I think the explanation was that the transportation  
6 and the technical service to be provided by Mitsubishi for the  
7 equipment insulation would be contracted later.

8 Q. Okay. So did the parties reach an agreement? What was he  
9 asking from Mitsubishi as a result of his claim that C.F.E.  
10 wanted to reduce the amount of the payments to F.G.G.?

11 A. He was asking essentially for Mitsubishi to accept that  
12 F.G.G. had to do that with C.F.E. and that Mitsubishi therefore  
13 would receive less percentage for each payment and also a lesser  
14 amount in the grand total after all payments were made.

15 Q. And what was his explanation for why Mitsubishi should  
16 receive less money from the grand total?

17 A. I mean I don't remember a true explanation of that, but it  
18 was because otherwise the deal can't happen.

19 Q. Did the parties reach an agreement?

20 A. Yes. We eventually reached a compromise in which  
21 Mitsubishi and also Mr. Rick Williamson agreed to give up some  
22 of their earnings to try to make this work. And so we agreed on  
23 a new payment schedule to match one of the C.F.E. schedules and  
24 we agreed on a new grand total.

25 Q. Did your agreement, based on your representation from

1 Mr. Delgado that C.F.E. was going to reduce the amount of the  
2 first two payments from 20 million to 15 million and from 12  
3 million to 7 million -- let me strike that.

4 Was your agreement based on a representation from  
5 Mr. Delgado that C.F.E. was going to reduce the amount of the  
6 first and second payments?

7 A. Definitely it was based on that.

8 Q. Okay. And then I ask you to take a look at Government  
9 Exhibit 48. It's already in evidence.

10 A. Uh-huh.

11 Q. I'm going to scroll through this document and ask you if  
12 you recognize it?

13 Do you recognize this e-mail?

14 A. I do.

15 Q. So we're going to go to the top of the chain and then we'll  
16 work our way through it.

17 Is this -- at the top of the e-mail chain, is this an  
18 e-mail from Mr. Gireud to you copying John Adams and Marco  
19 Delgado and Mace Miller?

20 A. Yes, it is.

21 Q. Okay. And is the date sent that is shown on this document  
22 March 22nd, 2010?

23 A. It is.

24 Q. So let's start at the bottom of the e-mail, so we can work  
25 our way up in time.

1           So at the bottom of the e-mail chain, is there an  
2 e-mail from you to Marco Delgado dated March 12, 2010?

3 A. Yes, it is.

4 Q. And is that the same date that you received the e-mail with  
5 the chart that had a forwarding e-mail from C.F.E. --

6 A. Yes.

7 Q. -- if you remember. Or would you like me to pull that  
8 e-mail up again?

9 A. I do remember.

10 Q. And I'm going to go ahead and read a portion of this, and  
11 I'm going to ask you a question, Marco, we have analyzed the  
12 proposed payment options A and B being discussed for payments  
13 between C.F.E. and F.G.G. Mitsubishi cannot agree with the  
14 depicted concept and request that although the transportation  
15 and services may be subtracted per the contract, the percentages  
16 and the executed C.F.E. F.G.G. contract should not change until  
17 the final accelerated schedule is approved. Therefore, the  
18 first payment should be remain 16.5 percent of the adjusted  
19 amount of 106.6 million. The second should be ten percent. The  
20 third should be 49 percent and so on for now as shown in column  
21 precio (Spanish) of the program comparison table that you sent  
22 us.

23           Can you explain to the jury what you are saying in  
24 this passage?

25 A. After seeing the attachment that said we have to consider

1 options A and B, I was saying that if the transportation is not  
2 to be contracted yet or the service, then we don't mind  
3 reducing -- that the price would be 106. But I was saying in  
4 certain terms that the percentages of each payment should not  
5 change.

6 And the reason I mentioned the accelerated schedule is  
7 because I was making the point that if the explanation for the  
8 percentages being changed is because they are going to pay us  
9 sooner for faster delivery of the equipment, then we need to  
10 document and memorialize a written agreement for the new  
11 schedule before we can entertain any payments being less,  
12 because we were just being told it's going to happen and  
13 therefore you should accept these terms now and we're saying not  
14 now. It's after the schedule is -- is actually documented and  
15 agreed to.

16 Q. Was Mitsubishi going to agree to a lesser amount on its  
17 contract, if you recall?

18 A. A lesser amount? You mean a total amount?

19 Q. Yes, sir.

20 A. Only to the extent that transportation and service would  
21 not be purchased. So if we didn't have to transport the  
22 equipment we didn't expect to get paid for transport.

23 Q. I'm going to now scroll further down into this e-mail.  
24 What is the chart at the bottom of this e-mail?

25 A. Would you scroll up so I can read the previous page a

1 little bit?

2 Okay. Would you go down again, please?

3 So I was confirming that based on what we are saying,  
4 that is the only thing we can do, then I was saying that  
5 therefore here are details of where the money should be sent.  
6 And for each payment, number one through six, I was now putting  
7 the dates of the actual payment based on when I knew the prime  
8 contract had been signed. So now I was stating the dates and  
9 putting the exact quantity that should be transmitted.

10 Q. Now is this the amount that was due before Option A and B?

11 A. This is the amount that would be due without us agreeing to  
12 Option A and B.

13 Q. Are you fluent in Spanish?

14 A. Excuse me.

15 Q. Are you fluent in Spanish?

16 A. I am fluent in Spanish.

17 Q. How did you learn Spanish?

18 A. I was born and raised in Honduras. And even when I lived  
19 in the United States within my family we spoke Spanish and for  
20 the last few decades I have been doing business in Spanish as  
21 well as English and Japanese.

22 MR. ARREOLA: Your Honor, may I ask the witness to  
23 translate the header and the first line beginning "detalles en  
24 pago numero uno" (Spanish) on this page.

25 THE COURT: Well, he can tell us what it means to him.

1 MR. ARREOLA: Okay. Thank you.

2 BY MS. ARREOLA:

3 Q. Mr. Ponce, can you explain what it means to you?

4 A. This meant -- it was details of the payments to Mitsubishi,  
5 both -- all of the payment numbers, the dates and the amounts.

6 Q. And what is the first line?

7 A. The first line, where, in the -- oh, it was payment number  
8 one, date, March 6th, 2010, amount to Mitsubishi 16,995,000 U.S.  
9 dollars.

10 Q. Okay. Now it says here March 6th, 2010, and the date of  
11 this e-mail is March 12th?

12 A. Uh-huh.

13 Q. So was the first payment already late?

14 A. The first payment was already late at that time, yes.

15 Q. We're going to go to the next e-mail and is this an e-mail  
16 from you to Mr. Gireud dated Sunday March 21st?

17 A. Yes.

18 Q. And that's a Sunday; is that correct?

19 A. Over time, yes.

20 Q. Can you read the two paragraphs that I've highlighted and  
21 then I'm going to ask you a question?

22 A. Read the first paragraphs?

23 Q. The first two paragraphs and we'll read along with you.

24 A. Okay. It says, gentlemen, per authorization by John Adams  
25 of M.P.S.A., F. Gireud of F.G.G. and R. Williamson of Thomassen

1 Amcot, I send you this conversation of our discussions and  
2 agreement with respect to the subject C.F.E. Adjusted Payment  
3 Schedule, in capital letters, and its effect on F.G.G. and  
4 M.P.S.A. subcontract payments.

5           Firstly, for your information, below is the first  
6 response sent to Marco Delgado on the 12th of March, 2010, when  
7 he first sent the subject payments schedule for comments by  
8 M.P.S.A. According to what was explained to us, C.F.E.'s  
9 position is that the adjustments in the schedule are necessary  
10 because the transportation and technical services must be  
11 subtracted. We understand why, but hope eventually it will be  
12 add. And because C.F.E.'s cash flow will change if and when the  
13 schedules and payments are accelerated, we do not think this is  
14 applicable for now, since the schedule does not at all reflect  
15 any accelerated schedule. Our response below indicated our  
16 disagreement in the change of percentages led, of course, to our  
17 March 19th, 2010, meeting with Marco and Fernando visiting  
18 M.P.S.A.

19 Q. All right. Can you tell us, is that March 9th, 2010,  
20 meeting the same meeting that you talked about earlier in  
21 Orlando?

22 A. You meant March 19th?

23 Q. Yes, sir.

24 A. Yes, it is the same meeting.

25 Q. Okay. I'm going to ask you to jump down and read the

1 paragraph that I've highlighted, number one.

2 A. Number one was the parties agree to accept Option A of the  
3 attached C.F.E. payment schedule beginning with 14 point of  
4 seven percent -- 14.07 percent, \$15-million payment from C.F.E.  
5 no later than March 6th, 2010, with the subsequent same  
6 percentage payments summarized therein and a final payment to  
7 complete the total price.

8 Q. You said March 6th. Did you mean to say April 6, 2010?

9 A. I meant April 6th, yes.

10 Q. And what is Option A that the parties agreed to?

11 A. Option A was one of the columns originally sent to us with  
12 a new total without the transportation and technical services as  
13 well as new percentages, us, was being requested of M.P.S.A.

14 Q. Okay. So I've just highlighted a chart at the bottom of  
15 that e-mail. And is this Option A?

16 A. This is Option A, but only as recalculated from the portion  
17 which would go from F.G.G. to Mitsubishi.

18 Q. Okay. So thank you for that clarification. So this is how  
19 Option A would affect the payments made to Mitsubishi?

20 A. Correct.

21 Q. And Option A, under Option A that Marco sent you in that  
22 chart that appeared to be from C.F.E., what was the amount of  
23 the first payment that was going to be due to F.G.G. under  
24 Option A? Would you like me to pull it up again?

25 A. Yes, I would.



1 Q. Okay. I'm going to show you Government Exhibit 47A.

2 A. Got it.

3 Q. What did Mr. Delgado represent would be the first payment  
4 to F.G.G. from C.F.E. under Option A?

5 A. He in this chart represented that it would be \$15 million.

6 Q. And I'm going to go back to Government Exhibit 48. And as  
7 a result of Option A, how much would be due to Mitsubishi as a  
8 first payment?

9 A. It would be 14,493,433 U.S. dollars.

10 Q. Now the total at the bottom of the chart indicates \$103  
11 million to Mitsubishi. Did Option A affect the total amount  
12 that would be due at the end of the day to Mitsubishi, if you  
13 recall?

14 A. Option A was between F.G.G. and C.F.E., therefore it did  
15 not directly affect, but we were agreeing that we would apply  
16 the same percentages, therefore it affected each payment, but I  
17 believe the total of \$103 million was a separate number that we  
18 agreed was the total due between F.G.G. and M.P.S.A.

19 Q. Okay. So let's go ahead and scroll up to the final e-mail  
20 in this chain. And is this an e-mail from Fernando Gireud to  
21 you copying John Adams as well as Mr. Delgado and two others?

22 A. It is.

23 Q. And is the date on this March 22nd?

24 A. It is.

25 Q. I'm going to go ahead and read briefly from this e-mail.

1           Gentlemen, thank you for your prompt response. Marco  
2       could not get a ticket back from Orlando this morning and he is  
3       flying at this moment. I forwarded your documents to Mace  
4       yesterday and he is still re- -- is still "review" them. I do  
5       not think it's necessary from John to go to Mexico today. As  
6       soon as I "talked" to Marco and Mace today, I will replay your  
7       e-mail. I do not see any problems in signing this document.  
8       Thanks again very much for your patience and understanding and  
9       especially good faith on this situation.

10           Which document did you understand him to be referring  
11       to?

12       A. I understand it was the e-mail below in which I said,  
13       gentlemen, please reply to all to formally confirm your basic  
14       agreement with this compromise.

15       Q. In response to this e-mail, did Mr. Delgado write to say,  
16       hey, guys, don't worry about it. C.F.E. has actually made the  
17       \$20 million payment. No need to do an Option A?

18       A. No. Mr. Delgado never said anything like that.

19       Q. I'm going to ask you to look at Government Exhibit 94. Now  
20       you are not copied on this e-mail, but I'm going to read a  
21       sentence where your name appears and then ask you a question.  
22       Okay. I'm going to read and then follow up with a question.

23           For further reference and clarification on any and all  
24       of the technical administrative or financial agreements relating  
25       to the Agua Prieta project, please refer to the copies of the

1 final agreement and its attachments that were approved and  
2 signed page by page by John Adams in his capacity at M.P.S.A.,  
3 officer in charge of the project and M.P.S.A.'s agent, Hector  
4 Ponce.

5 Did you sign any copies of a final agreement on the  
6 Agua Prieta II project?

7 A. I never signed any copies, no.

8 Q. Now, we looked at the pledge agreement. I'm going to ask  
9 you to look at the subcontract which is Government Exhibit 12.  
10 I'm going to look at the Spanish language because that's what  
11 shows the signatures. And I'm just going to scroll through this  
12 document and ask you if your initials appear on any pages of  
13 this document?

14 A. Were we talking about the subcontract or the prime contract  
15 a moment ago?

16 Q. Out of an abundance of caution, I'm going to ask you about  
17 both contracts.

18 A. Okay.

19 Q. For the record, we are looking at each page of Government  
20 Exhibit 12, the subcontract, the original Spanish language  
21 version. Do your initials appear on any pages of this document?

22 A. They do not appear.

23 Q. And I'm going to ask you to look at Government Exhibit 18,  
24 the prime contract between F.G.G. and Mitsubishi -- excuse me  
25 the prime contract between F.G.G. and C.F.E.?

1 A. Uh-huh.

2 Q. And we're going to look at the Spanish language because  
3 that has the signatures.

4 MR. ARREOLA: And for the record we're scrolling  
5 through every page of Government Exhibit 18.

6 BY MS. ARREOLA:

7 Q. We just looked at the first 21 pages of Government 18. Did  
8 your initials appear on any of those pages?

9 A. My initials are not there.

10 Q. Were you employed with Mitsubishi Power Systems America  
11 when you were working on the Agua Prieta II project?

12 A. I was not employed, no.

13 Q. And were you authorized to sign any contracts on behalf of  
14 M.P.S.A. as a contractor?

15 A. I was not authorized to sign anything.

16 Q. I'm going to now ask you to look at Government Exhibit 144.  
17 Please take a look at this document and tell me if you recognize  
18 it?

19 A. I recognize it.

20 Q. Can you explain to the jury what this document is?

21 A. It was a check made out from F.G.G. Enterprises made out to  
22 me, even though my last name was slightly misspelled, for  
23 2,200 U.S. dollars.

24 Q. Why was this payment made to you?

25 A. As the memo implies at the bottom, it says, LAPEM, This was

1 a situation under the qualification of Mitsubishi to supply  
2 equipment and service. F.G.G. and specifically Mr. Delgado had  
3 told us that the C.F.E. required the suppliers of equipment and  
4 service to be certified by LAPEM. My understanding was that  
5 LAPEM was an agency related to the C.F.E. that was in the  
6 business of reviewing the qualifications of the supplier to see  
7 if they were approved by the C.F.E. for providing the service.

8 So it was explained to me that we needed to quickly  
9 provide qualifications of Mitsubishi Power Systems Americas in  
10 Orlando, meaning our parts manufacturing, our I.S.O.  
11 certifications, the kind of staff that we had indicating that we  
12 had the people qualified to provide these services. And we did  
13 fill out and supply several forms that need to be filled out to  
14 prove that M.P.S.A. was a qualified supplier.

15 One time I was in Mexico and Mr. Delgado said to me,  
16 personally, that there was a fee involved for the processing of  
17 the LAPEM certification. And I said, no problem. Give me the  
18 documentations. I'll get the fee paid by Mitsubishi and he  
19 indicated to me, no, we need it now. And I said now? What does  
20 it mean? We need to now. I need to run over there and take the  
21 money. And I said I don't have the money and he asked me if I  
22 could get it out of my ATM, my personal account. And I thought  
23 it was urgent and I went to the ATM and I took out 2,200 and  
24 gave it to Mr. Delgado and asked him to get me the receipt, so  
25 that I could properly submit it to Mitsubishi and get my

1 personal money reimbursed as an expense. That would not have  
2 been a big deal.

3 The receipt was not given to me that day. And then  
4 for several days afterwards I asked Mr. Delgado to give me the  
5 receipt and I did not get the receipt, so I could not recover my  
6 money. When I mentioned this to Mr. Gireud sometime after that,  
7 he said I'll get you the receipt. And then I chased him for a  
8 few more days and he could not get me the receipt. And I, as I  
9 maintained the pressure, then he said I'll reimburse you the  
10 money and F.G.G. will pay for that fee therefor and he sent me  
11 this check I believe by mail.

12 Q. How were you able to withdraw 2,200 from your ATM? Didn't  
13 you have a limit?

14 A. I did have a limit. I had a cell phone also so I called  
15 the Bank of America, which was my bank at the time, and I asked  
16 them, I told them I am in Mexico and I am Hector Ponce and of  
17 course they asked me for the last four of your social and what's  
18 your address and the security questions. And they essentially  
19 removed my limit for me to be able to withdraw \$2,200 at that  
20 moment from that machine.

21 MS. ARREOLA: May I have a moment, Your Honor?

22 THE COURT: Yes, ma'am.

23 Ladies and gentlemen, we are going to recess for ten  
24 minutes. If you'd be back in the jury room at 9:50, we'll  
25 resume our proceedings then.

1 (Break at 9:41 a.m. to 9:52 a.m.)

2 THE COURT: Let the record reflect that all members of  
3 the jury are present, the United States through its assistant  
4 United State's attorneys are present, the defendant and his  
5 attorney is present.

6 Ms. Arreola, you passed the witness?

7 MR. ARREOLA: Yes, Your Honor.

8 THE COURT: All right.

9 MR. ARREOLA: Thank you.

10 THE COURT: Ms. Franco, good morning.

11 MS. FRANCO: Good morning, Your Honor. Thank you.

12 HECTOR PONCE,

13 CROSS-EXAMINATION BY THE DEFENSE

14 BY MS. FRANCO:

15 Q. Mr. Ponce, you testified yesterday afternoon and this  
16 morning when you speak about what we would have done. It sounds  
17 as if you are saying you were an employee of M.P.S.A. at that  
18 time. You were not, correct?

19 A. I was not an employee.

20 Q. And you had left M.P.S.A. back in 2007, correct?

21 A. That is correct.

22 Q. And John Adams had asked you to come back specifically for  
23 this project; is that right?

24 A. Yes.

25 Q. And that was sometime in 2009, correct?

1 A. I believe so, yes, early 2009.

2 Q. And at the time in 2009, you were aware, were you not, that  
3 there were these gray market turbines in the possession of  
4 either it would have been Mitsubishi heavy machinery or  
5 industries?

6 A. I was aware in general that there were machines in the gray  
7 market, yes.

8 Q. And that would include the turbines that are the subject  
9 matter of this and other litigations, correct?

10 A. Specifically, I only found out and discussed those units at  
11 the time that Mr. Mitsubishi asked me to come and help on this.

12 Q. Right. So what I'm asking you though is, is that it's the  
13 same three turbines that we're talking about, correct?

14 A. Yes.

15 Q. And they were -- they were gray market because another  
16 company had contracted with M.H.I. to build the turbines for  
17 them, correct?

18 A. Yes.

19 Q. And that company decided to go with a different product?

20 A. No, they cancelled the project.

21 Q. They cancelled it?

22 A. Right.

23 Q. As you were telling the jury yesterday, did that company  
24 have some type of a letter that protected M.H.I. from the  
25 cancellation of this deal?



1 A. I'm not aware of any letter of credit.

2 Q. Are you aware of any amount of money that was given to  
3 M.H.I. as a result of cancellation of this project?

4 A. No.

5 Q. These were not going to be refurbished turbines as in the  
6 Agua Prieta case. These were brand new constructed turbines,  
7 correct?

8 A. They were brand new and constructed and never been used and  
9 were being preserved.

10 Q. And two of them were in Japan and one of them was in  
11 France, correct?

12 A. Or vice versa.

13 Q. Okay. Well you said earlier you were instrumental in this  
14 teaming agreement with F.G.G. and working with C.F.E. for the  
15 sale of these turbines, correct?

16 A. Correct.

17 Q. Is it now that you don't recall where they were located at  
18 that time?

19 A. It's not an important subject, but I believe the steam  
20 turbine was in Japan [sic] and the two gas turbines in  
21 France [sic].

22 Q. So you think it was two of those in France and one that was  
23 in Japan?

24 A. I believe so.

25 Q. And where the location of the turbines were, that wasn't

1 important to you in the teaming agreement?

2 A. It wasn't important to me at the time.

3 Q. Well of course the teaming agreement spoke about delivery,  
4 who was going to pay for transportation and things like that,  
5 correct?

6 A. Correct.

7 Q. So where they were located, that would be a material term  
8 of this teaming agreement and subsequent subcontract with  
9 F.G.G., correct?

10 A. No, it is important. I'm just saying to me the exact  
11 location, the city name was not important at the time.

12 Q. Or the country for that matter, apparently, correct?

13 A. No the country I knew very well was Japan and France.

14 Q. But you don't know which was where, correct?

15 A. No. At this moment when you were asking me, you said two  
16 of them are in Japan and one in France. At this moment, years  
17 later, I could not answer your question specifically, so I said  
18 it might be vice versa.

19 Q. And this did take place a long time ago, correct?

20 A. It took place in 2009.

21 Q. Right. So that was awhile ago, correct?

22 A. Yes.

23 Q. So when I'm asking you a question, are you having problems  
24 recalling specifically what the answer is; correct?

25 MR. ARREOLA: Objection, Your Honor.

1 A. I was only having trouble with the city side you asked me  
2 about.

3 MR. ARREOLA: Argumentative.

4 MS. FRANCO: Your Honor, I'm just pointing out that I  
5 asked him a pretty simple question and he can't remember it.

6 THE COURT: He answered the question. Let's move on.

7 BY MS. FRANCO:

8 Q. Now I believe you said instrumental in drafting the teaming  
9 agreement, correct?

10 A. Yes.

11 Q. I know that you testified as to your qualifications and  
12 where you went to school. Did you also go to law school, and  
13 you didn't testify to it yesterday?

14 A. I never went to law school.

15 Q. Did you draft the teaming agreement or did Mr. Altamura,  
16 who is in the legal department, draft the legal agreement?

17 A. We all participate in drafting what's important and he  
18 writes it.

19 Q. Okay. Well, yesterday you testified that you were  
20 instrumental in drafting that agreement. Is that sales talk for  
21 what you did or are you just saying that you helped Mr. Altamura  
22 put the terms together?

23 A. Typing is one thing. Discussing as a team what are the  
24 important concepts to be put into an agreement between two  
25 companies is what I consider instrumental, not typing itself.

1 Q. So the general counsel in the legal department at M.P.S.A.,  
2 that was his job was just to type it up? You went to law school  
3 so you could type up a teaming agreement?

4 A. That's not what I said. I said I did not type it. And  
5 when I mean instrumental from my point of view is I had  
6 knowledge to contribute in putting together a teaming agreement,  
7 but we put it together as a company.

8 Q. But you didn't -- you didn't have, you weren't instrumental  
9 in putting all of the conditions and terms in that teaming  
10 agreement?

11 A. I don't think I understand your question.

12 Q. Let me ask you this way.

13 Mr. Altamura is the one who actually drafted this  
14 teaming agreement between F.G.G. and M.P.S.A., correct?

15 A. Correct.

16 Q. And what you're saying is that you had some input into some  
17 of the terms between the parties, correct?

18 A. Yes.

19 Q. Now on the subcontract, you said that it was F.G.G. who had  
20 requested that it be done in Spanish?

21 A. I believe that is the case, yes.

22 Q. But you don't know that to be the case, correct?

23 A. I don't recall right now exactly how it came up, but we  
24 would not normally do an agreement between two companies in  
25 Spanish, therefore I believe it was F.G.G. who asked for that.

1 Q. But you were in Mexico, right, when this contract was  
2 executed, the subcontract?

3 A. When it was executed, we were in Mexico, yes.

4 Q. Right. Because you were the one who wrote, handwritten on  
5 that last page, in English, some additional terms, correct?

6 A. Yes, uh-huh.

7 Q. And you don't remember right now who it was that made you  
8 sat behind the computer and typed in the Spanish language in  
9 this contract. You are telling the jury now that you don't  
10 remember who it was that drafted that contract?

11 A. The subcontract you're talking about?

12 Q. Yes, sir.

13 A. I believe that Altamura and I were there and we were both  
14 probably typing in Spanish and translating.

15 Q. So then that's different than what you just testified to,  
16 because you said you don't know who drafted it and put it in  
17 Spanish, but now you're saying in fact it was M.P.S.A. that  
18 drafted and put this subcontract together in Spanish, correct?

19 MR. ARREOLA: Objection, Your Honor. Argumentative  
20 and compound question. Could you break it down?

21 THE COURT: It's two questions, so let's break it  
22 down.

23 BY MS. FRANCO:

24 Q. A moment ago you said you didn't recall who wrote -- who  
25 drafted the contract in Spanish, correct?

1 A. Are you only talking with the subcontract or the teaming  
2 agreement?

3 Q. Yes, sir. Yes, sir, the subcontract. You're in Mexico  
4 City.

5 A. Right.

6 Q. You and Mr. Altamura who is with the general counsel's  
7 office at M.P.S.A. are in Mexico City working on the subject,  
8 correct?

9 A. Yes.

10 Q. And yesterday you testified that you believed that M.P.S.A.  
11 did not draft the contract in Spanish, correct?

12 A. I do not recall testifying to that yesterday.

13 Q. All right. But -- let's move on.

14 Now you're saying that it probably was you and  
15 Mr. Altamura who worked on that contract in Spanish, correct?

16 A. We worked during those meetings on that contract in Spanish  
17 and translating it as well to English for our peoples' benefit.  
18 I do not --

19 Q. Is that a yes?

20 A. The problem is that I do not recall if we actually drafted  
21 it or if it was given to us already in a drafted form. But we  
22 worked on it in order to finalize it, including both he and I  
23 typed in a computer. I just don't remember who wrote the  
24 initial version.

25 What we do normally is that whatever document we're

1 working off, we red line, we go back and forth. So I remember  
2 working on that, but I don't remember if the initial draft was  
3 given to us already drafted or if we typed it ourselves. I just  
4 don't remember that.

5 Q. So let's back up and talk about that for a minute.

6 So when you met with F.G.G. the first time, it was  
7 your understanding that they had never been involved in any type  
8 of deal like this before, correct? As far as buying turbines  
9 and reselling them to the Mexican company, it was your  
10 understanding this was the first time they had done it, correct?

11 A. That's what I thought, but I don't remember anybody saying  
12 this is the first time that we done it. That's what I thought.

13 Q. Do you remember going and speaking to the U.S. Attorney's  
14 Office and maybe one of these agents with your attorney,  
15 regarding this matter?

16 A. Yes.

17 Q. Do you remember telling them you found it strange that a  
18 small company from El Paso would have been able to get the  
19 bidding rights to the C.F.E. contract?

20 A. Yes, I do find it unusual.

21 Q. Did you have any indication that they had been in the  
22 business for a long period of time buying equipment and then  
23 selling it back to another entity?

24 A. No, I didn't have such indication.

25 Q. Now, on the other hand, M.P.S.A. is in the business of

1 heavy machinery, either from your parent in Japan or in the  
2 local company here in the United States, correct?

3 A. Yes.

4 Q. And so entering into a subcontract would be something that  
5 M.P.S.A. has probably done thousands of times, correct?

6 A. Numerous times, yes.

7 Q. Right. And yet you're not sure exactly who it was that  
8 brought that original Spanish subcontract to Mexico?

9 A. Correct.

10 Q. Okay. And if Mr. Gireud had testified yesterday that in  
11 fact it was M.P.S.A. that drafted that contract in Spanish,  
12 copying information out of the prime contract, would -- or the  
13 bid specifications, would that surprise you?

14 A. I have no comment on what Mr. Gireud might say or might not  
15 say.

16 Q. Now, getting back to your relationship with Mr. Adams, you  
17 had testified yesterday that you hired him, correct?

18 A. Yes.

19 Q. And he worked for you for a period of time, correct?

20 A. Yes.

21 Q. And then you left and he assumed, I presume, a higher  
22 position in the company, correct, to the best of your knowledge?  
23 In other words, after you left, was he promoted?

24 A. I don't actually know if he was promoted. No, I don't  
25 know.



1 Q. Some period of time after you left M.P.S.A., Mr. Adams  
2 asked you to come back?

3 A. Yes.

4 Q. And in fact, you and Mr. Adams worked very closely on this  
5 contract, correct?

6 A. Yes.

7 Q. And -- and you and Mr. Adams were and have continued to be  
8 very close friends, correct?

9 A. Yes.

10 Q. And you talk on a regular basis, correct?

11 A. No.

12 Q. You don't speak to Mr. Adams regularly?

13 A. No.

14 Q. And you and Mr. Adams actually share an attorney, do you  
15 not?

16 A. Uh, yes.

17 Q. And that's the same attorney that has accompanied you to  
18 your interviews with the agents in this case in the U.S.  
19 Attorneys?

20 A. I know who my attorney is, but I don't know.

21 Q. I'm asking you about your attorney.

22 A. My attorney is Bill Caulfield and, yes, he accompanies me  
23 to those meetings.

24 Q. Right. And is he Mr. Adams' attorney as well?

25 A. Only so far as I know, but I don't know that for a fact.

1 Q. And he's here in the courtroom today?

2 A. Yes.

3 Q. And he's been here in the courtroom this entire time?

4 A. Yes.

5 Q. And after Mr. Adams left in April 2010, did you continue to  
6 get consulting contracts from M.P.S.A. after he left?

7 A. No.

8 Q. Now, when you entered into your consulting contracts with  
9 M.P.S.A., did you actually sign a contract with M.P.S.A. or was  
10 it more as on a as needed basis?

11 A. I signed a contract with M.P.S.A.

12 Q. And what were the terms of that contract, sir?

13 A. It was that I would provide service and get paid a daily  
14 rate for my service.

15 Q. And what was your daily rate?

16 A. It was \$800.

17 Q. And when was the first time you entered into a contract to  
18 work on this project?

19 A. I believe it was early 2009. That's to the best of my  
20 recollection.

21 Q. On your screen you should see what's marked as Defendant's  
22 Exhibit 201. Do you see that?

23 A. Yes, I do.

24 Q. And do you recognize it?

25 A. Hold on. If you slow down.

1 Q. Let me know when you want me to scroll.

2 A. Uh-huh. Yes, I recognize it.

3 Q. And what is it, sir?

4 A. It's an invoice from me to Mitsubishi for nine days of  
5 work.

6 Q. All right. Let me just stop you there, because it hasn't  
7 been admitted yet before you testify off of it.

8 MS. FRANCO: Your Honor, move for admission of  
9 Defendant's Exhibit 201.

10 MR. ARREOLA: No, objection.

11 THE COURT: Defendant's 201 is admitted.

12 BY MS. FRANCO:

13 Q. Now let's go back to what this is. This is a consulting  
14 service invoice, correct?

15 A. Yes.

16 Q. And this covers the time period of December 12th through  
17 December 31st of 2009, correct?

18 A. Correct.

19 Q. And so it doesn't include the time that you spent on the --  
20 well, let me back up. Did you go with Mr. Adams to Mexico  
21 around the 6th or 7th of December to meet with C.F.E. and F.G.G.  
22 officials regarding the Agua Prieta deal?

23 A. Could you repeat the question?

24 Q. Did you accompany Mr. Adams to Mexico earlier in the month  
25 in December to meet with C.F.E. and F.G.G. to discuss the Agua

1 Prieta contract?

2 A. I don't remember what dates I went with John Adams.

3 Q. Did you got with him at some point in time in December?

4 A. I think at one point John and I were in Mexico together,  
5 yes.

6 Q. On the trip to Mexico, what you'll see in the middle of the  
7 page, it says business trip to Mexico, December 16th through the  
8 19th, 2009. You see that, right?

9 A. I see it.

10 Q. And Mr. Adams was not with you on that trip, correct?

11 A. I don't recall with respect to dates which dates John Adams  
12 was with me or not.

13 Q. Okay. How many times did you go to Mexico in December?

14 A. I don't recall that either.

15 Q. Okay. This December 16th through the 19th of 2009, that  
16 corresponds with the signing of the subcontract with F.G.G. and  
17 Mexico, correct? And I can pull up that subcontract if that  
18 would refresh your --

19 A. If you would, please.

20 Q. That's Government Exhibit 12. Let me get that for you.

21 Do you have Government's Exhibit 12 in front of you?

22 A. I have it.

23 Q. Okay. Does that refresh your recollection?

24 A. December 16th, yes, I see it.

25 Q. So, going back to -- going back to Defendant's Exhibit 201,

1 that trip where it says business trip to Mexico December 16th  
2 through the 19th, that corresponds with the signing of the  
3 subcontract?

4 A. Correct.

5 Q. And could you read to the jury what services, what the  
6 invoice was for, the three bullet points?

7 A. It was for various meetings and telephone conversations  
8 with M.P.S.A., F.G.G. and T.A.I. for C.F.E. contract follow.  
9 And it was for coordination and preparation of C.F.E. contract  
10 and F.G.G. subcontract documents. And it was for a business  
11 trip to Mexico on December 16 through 19, 2009, for which a  
12 separate expense report is for expenses.

13 Q. And we'll get to your expenses in a moment.

14 So that reflects what you were supposed to -- what  
15 that time period from December the 12th through December 31st,  
16 what you were supposed to be doing for M.P.S.A. in order to earn  
17 the \$7,200 that you charged him for, correct?

18 A. That's correct.

19 Q. And they paid that, correct?

20 A. Yes.

21 Q. I am going to ask you about -- do you see a document in  
22 front of you which is -- I'll scroll down so you can see it --  
23 to defendant's Exhibit 202, do you see that one?

24 A. I see it.

25 Q. Do you want me to scroll through all of it so you can see

1 it?

2 A. It's -- it's a similar invoice covering the dates  
3 January 17th through January 31st.

4 Q. And was this sent by you to M.P.S.A.?

5 A. Yes, it was.

6 MS. FRANCO: Your Honor, move for admission of  
7 Government's Exhibit 202.

8 MR. ARREOLA: No, objection, Your Honor.

9 THE COURT: Defendant's 202 is admitted.

10 BY MS. FRANCO:

11 Q. Now on this one, it's the same daily rate of \$800 per day,  
12 correct?

13 A. Correct.

14 Q. And you're charging M.P.S.A. for seven man-days, correct?

15 A. Uh-huh, yes.

16 Q. Okay. And could you read to the jury the middle portion  
17 here where it starts "this"?

18 A. It says, contract management F.G.G. subcontract and C.F.E.  
19 contract for Agua Prieta II project. Business trip to El Paso,  
20 January 22nd through 24th, see separate invoice and expense  
21 report.

22 Q. All right. So at the same time -- this isn't your first  
23 trip to El Paso, correct?

24 A. It is not.

25 Q. And you were in El Paso January 22nd through the 24th of

1 2010, correct?

2 A. Based on this, yes.

3 Q. And do you recall what the purpose of that meeting was?

4 A. I believe that the purpose of that meeting was for me to  
5 obtain a copy of the contract document which I have been asking  
6 F.G.G. and Mr. Delgado to provide to Mitsubishi for our  
7 evaluation.

8 Q. Okay. So let's talk about that for a second.

9 You were hired as a consultant by M.P.S.A. to shepherd  
10 through this teaming agreement that you worked on, make it come  
11 true into a subcontract, with the hopes that those three gray  
12 market turbines would find a home in Mexico, correct?

13 A. Yes.

14 Q. And as part of that I think you testified earlier that  
15 sometime in 2009, that you met with F.G.G. officials, correct?

16 A. Yes.

17 Q. And you had also met and looked at what C.F.E. wanted in  
18 their bid, so to see if the equipment that M.P.S.A. or M.H.I.  
19 had on him, would fit what C.F.E. was looking for, correct?

20 A. It was to see if the equipment could be supplied to F.G.G.  
21 in order for them to bid on the project.

22 Q. Correct. So you looked into that, you did your due  
23 diligence and went to see what it is that C.F.E. needed,  
24 correct?

25 A. Yes.

1 Q. And then to see if whether or not Mitsubishi had had  
2 something that would suit C.F.E.'s needs, correct?

3 A. Yes. We evaluated that.

4 Q. Okay. Now M.P.S.A. or M.H.I., were they -- neither one of  
5 those, either the parent company or the subsidiary in America,  
6 neither one of those companies had received an offer to bid on  
7 the Agua Prieta contract, correct?

8 A. You don't receive an offer to bid.

9 Q. Well --

10 A. You decide if you want to participate and you buy the bid  
11 specs, but I don't know. I don't know that they had received an  
12 offer to bid the way you mentioned it.

13 Q. Well, certainly M.H.I. and M.P.S.A. did not have the  
14 ability to bid on this contract for whatever reason?

15 A. That is correct.

16 Q. And -- but two other large companies did. That would have  
17 been Siemens, which is your former employer, correct?

18 A. Incorrect. Siemens was never my employer.

19 Q. Well, it was -- you worked for Westinghouse?

20 A. Yes.

21 Q. And Siemens took over Westinghouse?

22 A. After I left Westinghouse already.

23 Q. And another large company, General Electric, I believe, had  
24 also been on this project, correct?

25 A. They eventually did bid on the project.



1 Q. M.P.S.A., the American subsidiary of M.H.I. nor M.H.I.,  
2 neither one of them had a seat at the table so to speak to bid on  
3 this project; is that correct?

4 A. Correct.

5 Q. So when you meet with F.G.G. and you find out what this is  
6 that you perhaps could have equipment that could match it, and  
7 you travel to Mexico, you're not sure, but it could've been two  
8 times, and we'll talk about that in a second, but you were there  
9 with Mr. Adams sometime in December and you were there back for  
10 the subcontract signing, correct?

11 A. Yes.

12 Q. And the packet that was put together, the subcontract that  
13 was put together, are you telling this jury that when you wrote,  
14 you participated in that subcontract, you didn't have any of the  
15 other like the financial proposal from F.G.G., you hadn't seen  
16 the bid specs from C.F.E., you hadn't seen anything when you put  
17 together the subcontract?

18 MR. ARREOLA: Objection, Your Honor. Compact  
19 question.

20 MS. FRANCO: I can do it one by one, Your Honor. Just  
21 trying to make it go a little bit faster.

22 THE COURT: All right. Go ahead.

23 BY MS. FRANCO:

24 Q. Had you seen the R.F.P. from C.F.E.?

25 A. I had seen the bid specifications from C.F.E., yes.

1 Q. Right. Okay. And an R.F.P. is a request for proposal; is  
2 that correct, that's what that stands for?

3 A. Yes.

4 Q. And so you saw the bid specs that C.F.E. wanted, correct?

5 A. Correct.

6 Q. And did you see the financial proposal put together by  
7 F.G.G.?

8 A. No.

9 Q. So when you're in Mexico writing this subcontract, you  
10 never saw the proposal, are you telling this jury you never saw  
11 the financial proposal that F.G.G. had put together to C.F.E.?

12 A. That is correct, I never saw it.

13 Q. And you never saw any of the annexes or anexos or  
14 attachments to any type of the financial proposal that was  
15 submitted?

16 A. That is correct, I never saw it.

17 Q. So you entered into a contract and subcontract having not  
18 seen any of the documents from Mexico?

19 MR. ARREOLA: Objection, Your Honor. Clarification as  
20 to what is meant by any of the documents from Mexico.

21 THE COURT: Well the witness can answer whether any  
22 means any, so...

23 A. I saw the specifications for what C.F.E. was desiring.

24 BY MS. FRANCO:

25 Q. Okay. I understand that, but you had no idea what --

1 you're now in the relationship between you and F.G.G., F.G.G. is  
2 now your prime and you are the sub, right?

3 A. Correct.

4 Q. So you had no idea what it was that your prime was offering  
5 to C.F.E. when you wrote that subcontract?

6 A. The only idea that we had was when we were told that they  
7 were going to offer \$121 million, because remember that's also a  
8 readout of the offers made. At the time you submit the proposal  
9 to the C.F.E., they read out the numbers for price. So my  
10 understanding was it was 121 million, but I had no access to the  
11 annexes or the financial proposals or the payment terms that  
12 F.G.G. was making specifically to the C.F.E.

13 Q. I understand that that's your testimony. My question to  
14 you is that given what you're testifying to under oath today,  
15 are you saying that you entered into a subcontract or at least  
16 you participated in entering into the subcontract with this  
17 prime, the F.G.G. prime, when you were saying you hadn't seen  
18 any of the other documents to support it?

19 A. That is correct.

20 Q. Okay. When you were in Mexico City for the subcontract --  
21 let me go to another document here -- do you see the document --  
22 do you see a document in front of you that's marked Defendant's  
23 Exhibit 203?

24 A. Yes.

25 Q. And I'm scrolling up so you can see what it is.

1 Do you recognize it?

2 A. Yes.

3 Q. Okay.

4 MS. FRANCO: Your Honor, at this time --

5 BY MS. FRANCO:

6 Q. Is this something that you prepared?

7 A. Yes.

8 Q. And is it something that you sent to M.P.S.A.?

9 A. Yes.

10 MS. FRANCO: Your Honor, at this time I move for the  
11 admission of the Defendant's Exhibit 203.

12 MR. ARREOLA: No, objection, Your Honor.

13 THE COURT: Defense Exhibit 203 is admitted.

14 MS. FRANCO: Thank you, Your Honor.

15 BY MS. FRANCO:

16 Q. All right, Mr. Ponce, let's talk about what's in this  
17 document.

18 A. Uh-huh.

19 Q. So in addition to your consulting agreement where you were  
20 paid \$800 a day, you also were entitled for reimbursement for  
21 expenses that you incurred, correct?

22 A. Correct.

23 Q. So this period of time covers the November 11th, 2009  
24 through December the 19th of 2009, correct?

25 A. It does, yes.

1 Q. All right. And so this -- I'm going to read to you and ask  
2 you some questions about it.

3 A. Uh-huh.

4 Q. So this starts out: This invoice is for the following  
5 expenses reported via attached M.P.S.A. expense report form,  
6 incurred as independent contractor for M.P.S.A. And it goes  
7 through and says, dinners, dinners with F.G.G., C.F.E. during  
8 Orlando trip and trip to Mexico, a business trip to Mexico  
9 December the 9th through 11, 2009 for C.F.E. Agua Prieta project  
10 meetings and a business trip to Mexico September 16th through  
11 19th, 2009, for C.F.E. Agua Prieta project contract  
12 negotiations. Do you see that, sir?

13 A. Yes, I do.

14 Q. And the total you are asking to be reimbursed is \$409,  
15 correct -- or \$4,970.19?

16 A. Correct.

17 Q. Let me scroll through -- this is kind of weird to see --  
18 but if you can move your head a little bit, there's a -- I can  
19 get you a -- do you want to see a --

20 A. It doesn't matter, as long as you point me to what you want  
21 me to comment on.

22 Q. On the bottom of it, it talks about down here where it says  
23 entertainment business meals, and it has listed out there on,  
24 let's see, December the 16th and 17th and 18th, several  
25 different business meetings that you had with -- it's indicating

1 C.F. -- F.G.G., Mr. Gireud, Mr. Miller, Mr. Delgado. Do you see  
2 that there?

3 A. Yes, I do.

4 Q. Scroll through. This has attached several pages to it and  
5 some of them are hard to read, but let's go three and two. I  
6 believe it's page 19.

7 Now, this is a -- looks like a receipt that you  
8 presented to M.P.S.A. for reimbursement for a business dinner,  
9 correct?

10 A. Are you look -- I see two receipts there. Which one are  
11 you referring to.

12 Q. I'm referring to the one that's on the bottom of the screen  
13 that actually shows more of what was purchased during this  
14 business meeting. Do you see it?

15 A. I see it.

16 Q. And the other one on the top, it looks like the receipt is  
17 covering up what was actually purchased during that meeting,  
18 correct?

19 A. I believe that's what it is, yes.

20 Q. Okay. And so it appears to be perhaps a meal of some sort  
21 that you and several others had back on December the 16th of  
22 2009, correct?

23 A. That is what it appears to be, yes.

24 Q. And so looking through that, it appears that there was  
25 quite a bit of consumption of alcoholic beverages, correct? You

1 want to take a minute to look at that?

2 A. There was consumption of alcoholic beverages equivalent to  
3 a business meal, yes.

4 Q. So 20 drinks would be equivalent to a business meal?

5 A. It's -- you know the number of drinks are what's on there,  
6 so...

7 Q. And that was during the subcontract meetings that you had  
8 with F.G.G. and C.F.E. down in Mexico, correct?

9 A. December 16th is correct.

10 Q. Do you recall a conversation with Mr. Gireud, who was the  
11 president of F.G.G., where he indicated to you that Mr. Delgado  
12 was to get 62.5 percent of the first payment made from C.F.E. to  
13 F.G.G.?

14 A. That Mr. Delgado was to get 62 percent of the first payment  
15 from C.F.E. through F.G.G.? I don't recall that conversation.

16 Q. So you don't recall Mr. Gireud telling you that?

17 A. Correct, I don't recall.

18 Q. And if he had told you that, would that have caused some  
19 concern for you?

20 MR. ARREOLA: Objection. Calls for speculation.

21 MS. FRANCO: Just asking a hypothetical, Your Honor.

22 THE COURT: Well I'll overrule the speculation  
23 objection.

24 MR. ARREOLA: The witness has said -- first of all  
25 it's hearsay, and then the witness has said he doesn't recall

1 hearing that.

2 THE COURT: She's asking a hypothetical.

3 MR. ARREOLA: Okay.

4 BY MS. FRANCO:

5 Q. If Mr. Gireud had told you that Mr. Delgado, that he had  
6 entered into a contract with Mr. Delgado where he was to receive  
7 62.5 percent of the first disbursement of payment from C.F.E.,  
8 would that have caused you concern?

9 A. I would have been surprised, but I don't know if I would be  
10 concerned.

11 Q. I want to talk to you about the request for the equipment  
12 inspection back on Christmas Eve of 2009?

13 A. Uh-huh.

14 Q. Were you aware -- and I think you testified about it  
15 yesterday, but if not I'll bring it up through your  
16 recollection -- which is John Adams had sent an e-mail to  
17 Mr. Gireud and I'm referring to Government Exhibit Number 11,  
18 which I'm bringing up for you. Do you see that? I'll Scroll  
19 down so you can see that's number 11. And this has been  
20 admitted.

21 And this was an e-mail from Mr. Adams to Mr. Gireud  
22 and to you and to Mr. Altamura and Huwabee (phonetic)? Am I  
23 saying that right?

24 A. Yes.

25 Q. And it said, Fernando, M.P.S.A. is concerned about



1 finishing up our deal. Please see the attached letter. And  
2 signed by Mr. Adams, correct?

3 A. That's correct.

4 Q. Okay. And this is the November 27th letter. Do you recall  
5 seeing that?

6 A. Yes.

7 Q. All right. And that's where it's discussed what -- what  
8 was anticipated, I guess, by everyone involved with regard to  
9 the teaming agreement and the subsequent execution of a  
10 subcontract between M.P.S.A. and F.G.G., correct?

11 A. That is correct.

12 Q. Okay. And at this point in time, Mr. Adams is indicating  
13 that he's concerned about an informality, perhaps, that F.G.G.  
14 has been, I guess, acting, for a lack of a better word, with its  
15 negotiations with M.P.S.A. and with C.F.E., correct?

16 A. Correct.

17 Q. Okay. So this is back on November 27th. At that point in  
18 time there's no subcontract, correct?

19 A. At that point in time there was no subcontract, correct.

20 Q. So we're still under the teaming agreement, right?

21 A. Yes.

22 Q. And based upon his concerns, certainly you worked on the  
23 teaming agreement, so you know that M.P.S.A. could've backed out  
24 of this deal, correct?

25 A. I would have to review that carefully. I mean I believe

1 M.P.S.A. could have backed out of a deal.

2 Q. Okay. And then you say that -- so in December, mid  
3 December, you enter into this subcontract not having looked at  
4 any of the Mexican documents besides the bid specs. And then  
5 you get this odd call, according to what you testified to, this  
6 suspicious call, where the C.F.E. wanted to look at the  
7 equipment, correct?

8 A. Correct.

9 Q. And the actual prime contract between F.G.G. and C.F.E. had  
10 not been entered into, yet, had it?

11 A. As far as I know now, it had not been entered into.

12 Q. And that had -- hadn't been entered into until January 6th,  
13 I believe, of 2010?

14 A. I subsequently found out that that was the date.

15 Q. And you testified to the jury that after you got off the  
16 phone with Mr. Delgado that you and Mr. Adams looked at each  
17 other and you are like I think he's trying to pledge our  
18 equipment, right?

19 A. Or something to that effect. Not to pledge, but something  
20 is happening which doesn't seem right.

21 Q. And you-all didn't back out at that point in time, either  
22 did you? You didn't call Mr. Delgado back -- it wouldn't have  
23 been your place, because you weren't working for M.P.S.A., but  
24 Mr. Adams didn't call Mr. Delgado back or more importantly  
25 Mr. Gireud the president of F.G.G., and said, you know what,

1 we're not interested in pursuing this relationship that didn't  
2 happen, did it?

3 A. That did not happen.

4 Q. And subsequent to that, when the officials, they actually  
5 showed up in Japan and France, M.P.S.A. -- M.H.I., I should  
6 say -- they let him in. They let C.F.E. come in and look at the  
7 equipment, correct?

8 A. Yes.

9 Q. There wasn't a discussion by Mr. Adams calling up anyone or  
10 you, yourself, advising Mr. Adams, hey, you know what, let's not  
11 show them the equipment unless they show us the letters of  
12 credit, correct?

13 A. Correct.

14 Q. That never happened, did it?

15 A. It didn't happen.

16 Q. Even though you had your suspicions as to whether or not  
17 they had a letters of credit?

18 A. Yes. We wouldn't do such a thing based on suspicions.

19 Q. So you wouldn't have said, hold your horses, let's find out  
20 whether or not you met the requirements of what C.F.E. asked for  
21 before we let you see our equipment. You're saying that that  
22 couldn't have been done by Mr. Adams or higher up at M.P.S.A. or  
23 M.H.I?

24 A. I don't see the relevance. It could've been done, but it  
25 wasn't done.

1 Q. Correct?

2 A. Correct.

3 Q. Now, getting back to your handwritten note in the  
4 subcontract. Let me put it up in front of you. Let me show  
5 you. It's in front of you, 12A, and that's the Spanish version,  
6 so I can show you the handwritten note. Okay? All right.

7 So let's talk about this. This is on the last page of  
8 the subcontract. You testified yesterday that you're the one  
9 who wrote this, this term into the contract, correct?

10 A. Yes.

11 Q. Your initials aren't where you handwrote this, correct?

12 A. Correct, they are not.

13 Q. And you didn't sign this contract, correct?

14 A. I did not sign it.

15 Q. And what this says is with respect to the signed contract,  
16 the parties agree to check and amend the subcontract as needed  
17 and to adjust the price according to the final arrangements for  
18 letter of credit costs, shipping, delivery terms and any errors  
19 in the document in adjustments based on final prime contract,  
20 correct?

21 A. Correct.

22 Q. And the final prime contract you are referring to is the  
23 contract between F.G.G. and C.F.E., correct?

24 A. That is correct.

25 Q. And you testified yesterday that this subcontract that you

1 helped work on and that you handwrote in, it specifically  
2 excluded any mention of the long long-term service agreement,  
3 correct?

4 A. I believe it does.

5 Q. In fact, yesterday you testified that if the long long-term  
6 service agreement is mentioned in this, it was to say it does  
7 not apply to the long-term service agreement?

8 A. Yes.

9 Q. Now, at the time when the bid was awarded in November,  
10 F.G.G. got the -- they won the award for both the equipment  
11 itself and also the long-term service agreement, correct?

12 A. I don't remember if it was announced at that time.

13 Q. So you don't recall that they won the bid on both?

14 A. That's correct, I don't recall that.

15 Q. So do you recall another company winning the bid on a  
16 long-term service agreement?

17 A. No, I don't remember an announcement with regard to the  
18 L.T.S.A.

19 Q. Let me ask you this. Was it -- was a long-term service  
20 agreement excluded from this subcontract, because the long-term  
21 service agreement wouldn't begin until a year after the  
22 equipment had been placed in Agua Prieta?

23 A. No, that's not the reason why it would be excluded.

24 Q. Why did you exclude it from this contract?

25 A. I believe it's because the C.F.E. was awarding an equipment

1 purchase contract to F.G.G., and we were talking about an  
2 equipment supply subcontract to F.G.G. from us. And so one is  
3 for equipment and the other one will be for long term service,  
4 so here we are talking about the equipment subcontract.

5 Q. And if F.G.G. had won the bid for the long-term service  
6 contract, obviously M.P.S.A. would want to be able to provide  
7 that service to C.F.E., correct?

8 A. Correct.

9 Q. But that would be a direct relationship between M.P.S.A.  
10 and C.F.E.?

11 A. No. Specifically what we said in the teaming agreement was  
12 that F.G.G. would obtain that contract when it was time and that  
13 they agreed to, and that they would cost the C.F.E. to allow for  
14 assignment of the contract once done from F.G.G. to M.P.S.A. at  
15 which time we would become the prime contractor to the C.F.E.  
16 for the L.T.S.A. only.

17 Q. Okay. For the long-term service agreement?

18 A. Correct.

19 Q. So the middleman, as you called F.G.G. yesterday, they  
20 would have been out of it for the long-term service agreement?

21 A. That is correct as far as an assignment.

22 Q. So yesterday you testified that when you wrote the price  
23 according to the final arrangements for letters of credit, that  
24 really what you were talking about was the letters of credit for  
25 the L.T.S.A.?

1 A. That is correct.

2 Q. But you agree with me as you just testified to, this  
3 subcontract has nothing to do with the long-term service  
4 contract?

5 A. That's what I just said, yes.

6 MS. FRANCO: Your Honor, may we approach?

7 THE COURT: The bench?

8 MS. FRANCO: Yes, sir.

9 THE COURT: Sure.

10 (Bench conference.)

11 MS. FRANCO: Your Honor, I had provided a copy of this  
12 to counsel this morning. It's in English translation and an  
13 e-mail that Mr. Gireud had sent to Mr. Ponce, the forward of  
14 what Mr. Delgado sent to Mr. Gireud. And I don't have the  
15 Spanish version of it. I have the transmittal from them,  
16 because they provided documents to us in English. We haven't  
17 seen or at least we can't find in the thousands of pages, the  
18 Spanish, but we did receive this from them on --

19 THE COURT: So you want to introduced this?

20 MS. FRANCO: Yes, sir -- on April the 18th.

21 THE COURT: This is something you gave them. I guess  
22 you all translated it.

23 MR. ARREOLA: And I don't readily have the Spanish  
24 translation. I don't recall the document, but like Ms. Franco  
25 just said, there are over 20,000 pages of documents that were

1 produced. And I don't recall the specific one, but the  
2 government will rely on defense counsel's representation that  
3 this was produced, so we have no objection to her showing it to  
4 the witness.

5 THE COURT: You want to look at it?

6 MR. ARREOLA: They provided it this morning.

7 MS. FRANCO: So that's all I wanted to let you know,  
8 so we didn't have a fight in front of --

9 MR. ARREOLA: Thank you, Ms. Franco.

10 MS. FRANCO: Thank you.

11 (Bench concluded.)

12 BY MS. FRANCO:

13 Q. All right. Mr. Ponce --

14 MS. FRANCO: May I approach, Your Honor?

15 THE COURT: The witness?

16 MS. FRANCO: Yes, Your Honor.

17 BY MS. FRANCO:

18 Q. What I've marked as Defendant's Exhibit 205, take a look at  
19 that. There's a couple of pages attached to it.

20 THE COURT: This is 205?

21 MS. FRANCO: Yes, Judge.

22 THE COURT: Is there also a 204?

23 MS. FRANCO: I will get -- yes. I will submit it in  
24 just a second, Your Honor.

25 BY MS. FRANCO:



1 Q. Let me know when you've had a chance to look at it.

2 A. Okay.

3 Q. Do you recall getting an e-mail from Mr. Gireud?

4 A. I don't recall getting this e-mail, but as I see it, it's  
5 an e-mail from him to me, yes.

6 MS. FRANCO: Your Honor, at this time I move for the  
7 admission of the defendant's Exhibit 205.

8 MR. ARREOLA: No, objection, Your Honor.

9 THE COURT: 205 is admitted by the defendant.

10 BY MS. FRANCO:

11 Q. I'm going to place it on here so you can see it.

12 All right. Mr. Ponce, this is an e-mail that  
13 Mr. Gireud sent to you on December the 8th, correct?

14 A. Correct.

15 Q. And that would have been prior to your trip to Mexico City  
16 on December -- I believe you said you were there December  
17 the 16th around that period of time, correct?

18 A. Yes.

19 Q. And he is forwarding you an e-mail that Mr. Delgado had  
20 sent to Mr. Gireud where he said this is -- this is all. Don't  
21 ask for more, because there isn't anything more. Read the  
22 bidding rules if you want to see the original letter.

23 And so Mr. Gireud forwards that to you with some  
24 documents and says, Hector, this is all there is. If you want  
25 to see originals you are going to be with us later in Mexico.

1 Okay. Do you see that?

2 A. I see it, yes.

3 Q. All right. Then attached to that e-mail were some  
4 documents, correct?

5 A. Correct.

6 Q. And you have those in front of you?

7 A. Yes.

8 Q. But the first page looks like it's some sort of charges for  
9 product warranty service. Do you see that?

10 A. Yes.

11 Q. And that would be for the long-term service agreement?

12 A. This would be for the long-term service agreement.

13 Q. Okay. And then the second page that was attached to that  
14 is a continuation of that, correct?

15 A. Yes.

16 Q. And that is also for the long-term service?

17 A. Yes.

18 Q. And at the top of that page it has F.G.G. Enterprises, LLC,  
19 and it says, federal electric -- electricity commission  
20 international public bidding procedure and then it has a number.  
21 Do you see that?

22 A. I see it.

23 Q. So this would have been a response to the R.F.P. Is that  
24 what it appears to be?

25 A. It appears to be that, yes.

1 Q. On the third page of Defendant's 205 that's in front of  
2 you, it appears to be then the last quarter or the last page of  
3 the L.T.S.A., correct?

4 A. Yes.

5 Q. The next page talks about financing offer. Do you see  
6 that?

7 A. Yes.

8 Q. And so then it talks about how F.G.G. was going to finance  
9 the bid to the equipment, I guess, to C.F.E., correct?

10 A. May I take a moment to read it?

11 Q. Yes, sir.

12 A. Okay.

13 Q. Do you see the last paragraph where it says the financial  
14 institution will withhold the title of the assets in question as  
15 surety until the same enter into commercial operation and when  
16 the purchase amount is paid in full. Do you see that?

17 A. I see that.

18 Q. The next page, Defendant's 205, that would be the payment  
19 schedule that we've been talking about sense yesterday, correct?

20 A. Yes.

21 Q. And then the last pages of that attachment is the actual --  
22 it appears to be the first page to the bid submission by F.G.G.  
23 to the C.F.E., correct?

24 A. It appears to be that, yes.

25 Q. And it's addressed to the trust and/or Federal Elect

1 Commission, correct?

2 A. Correct.

3 Q. And it talks about the generators. Do you see that?

4 A. Yes.

5 Q. The steam generator and the two gas generators. You see  
6 that, right?

7 A. I see it.

8 Q. And it talks about if it's accepted that they'll get a  
9 letter of credit or a standby for the \$20 million. You see  
10 that, right?

11 A. Yes.

12 Q. Up at the first paragraph it talks about what the C.F.E. is  
13 looking for which is the purchase contract. Do you see that?

14 A. Tell me again where you are pointing?

15 Q. Let's go to the very first line where it says, after  
16 examining the terms of the bidding rules, any documents and  
17 their specifications and the agreements arising out of the  
18 clarification meetings, which you see that, right?

19 A. Uh-huh.

20 Q. We, the undersigned offer to provide and deliver the  
21 procurement and long-term product warranty service of two gas  
22 turbine generators and the one steam. You see that, correct?

23 A. Yes.

24 Q. So they are -- F.G.G. is asking C.F.E. to award them both  
25 the long-term service agreement and the actual equipment

1 contract, correct?

2 A. Yes.

3 Q. And on this document it says, our proposal is accepted, and  
4 it talks about the \$20-million letter of credit. You testified  
5 yesterday that the long-term service contract would inquire  
6 either a letter of credit or a parent warranty, correct -- or a  
7 parent guarantee? I'm sorry.

8 A. I testified that our proposal to F.G.G. was based upon a  
9 parent guarantee not a letters of credit for the L.T.S.A.

10 Q. Right. I know that that's what you wanted to get was a  
11 parental guarantee from M.H.I., but when you entered into that  
12 teaming agreement, at that time you didn't have the parental  
13 guarantee, correct?

14 A. We didn't have it meaning what?

15 Q. Meaning that, well, it wasn't right at that point in time  
16 because the long-term service agreement wouldn't come into  
17 effect until after the equipment has been placed in Agua Prieta?

18 A. That is correct.

19 Q. Okay. So the plan was to ask M.H.I. if they would, instead  
20 of you having to pay a million dollars or however much it was  
21 going to be to get the letters of credit to get the long-term  
22 service contract, you were hoping they would give some sort of  
23 parental guarantee, right?

24 A. Correct.

25 Q. Now in your discussions with -- in the teaming agreement

1 and with F.G.G., it was always understood, as you testified  
2 before, that with the long-term service agreement, F.G.G. would  
3 be out of the mix, that it was going to be a direct relationship  
4 between M.P.S.A. or M.H.I. and C.F.E., correct?

5 A. That the contract would be assigned to Mitsubishi Power  
6 Systems Americas.

7 Q. Right. So F.G.G. would be out of it?

8 A. That's what assignment means, correct.

9 Q. Right?

10 A. Uh-huh.

11 Q. Is that a yes?

12 A. Yes.

13 Q. Now going back to the first page of defendant's  
14 Exhibit 205, it indicates the date was December the 8th,  
15 correct?

16 A. Correct.

17 Q. And presumably then you did have the proposal from F.G.G.  
18 prior to the execution of the subcontract a couple of weeks  
19 later, correct?

20 A. We had these pages.

21 Q. Well, did you think -- and you had the specs. You said you  
22 had the specs?

23 A. Right.

24 Q. So did you think there were any other pieces of paper you  
25 needed to review beforehand?

1 A. In all honesty --

2 Q. Well, I hope so.

3 A. -- if we receive these pieces of paper on F.G.G. letterhead  
4 specifying or representing that this is what they gave to F.G.G.  
5 to C.F.E., we were never too sure if that was the case. We did  
6 receive this e-mail and it had this attached to it.

7 Q. Okay. You're telling this jury, so even now on December  
8 the 8th, you weren't sure and that's prior to executing the  
9 subcontract, right? You still weren't sure if this was a good  
10 deal or not. It was on the up-and-up, that's what you are  
11 testifying to?

12 A. No, ma'am. I'm testifying that we did not know what they  
13 had submitted to the C.F.E. The good deal for us was only what  
14 we on F.G.G. were contracting, which was a price and a set of  
15 payment terms. What they did to the C.F.E. was we just wanted  
16 to be sure that they were not proposing to the C.F.E. something  
17 that we did not represent to them that we would deliver.

18 Q. All right.

19 A. But the term good deal that you just used, our deal was  
20 specified by our teaming agreement on our discussions with  
21 F.G.G., not what they submitted to the C.F.E.

22 Q. Okay. But you testified yesterday and today that you  
23 hadn't seen anything that F.G.G. had submitted to the C.F.E. Do  
24 you recall that testimony?

25 A. That is correct.

1 Q. But in fact you did receive what F.G.G. had submitted to  
2 C.F.E., correct?

3 A. No, we received what Mr. Fernando said are copies of what  
4 they supposedly would have submitted, but this does not give any  
5 evidence that they in fact did submit this and that this is what  
6 it is.

7 Q. And did you think that back on December the 8th of 2009?

8 A. We just wanted to know did you submit our proposal, you  
9 know, with our specifications, the way we meant it.

10 Q. Let me ask you the question again.

11 A. Uh-huh.

12 Q. Did you think that on December the 8th when you received  
13 this e-mail with what F.G.G. said it had submitted to the  
14 C.F.E., did the thought cross your mind, I wonder if this is  
15 what they really submitted to the C.F.E.?

16 A. Yeah, the thought crossed my mind.

17 Q. But you went ahead and entered into a subcontract, correct?

18 A. Correct.

19 Q. You went ahead and let C.F.E. inspect the equipment in  
20 Japan and France, correct?

21 A. Correct.

22 Q. And you didn't inquire that a letter of credit be presented  
23 to -- or not you -- but M.P.S.A. didn't require the letter of  
24 credit be submitted prior to any inspection of the equipment?

25 A. A letter of credit submitted to who?



1 Q. To M.P.S.A., to verify that it had not pledged the  
2 equipment, as you suspected at the time.

3 A. No, we did not require the letter of credit at that time.

4 MS. FRANCO: Your Honor, I believe defendant's  
5 Exhibit 204 is what I'm lacking to submit. Let me go back to  
6 that.

7 BY MS. FRANCO:

8 Q. Okay. So on -- is that on your screen, Mr. Ponce?

9 COURTROOM DEPUTY DUEÑAS: Not yet.

10 MS. FRANCO: Oh, sorry.

11 BY MS. FRANCO:

12 Q. Do you see it on your screen, sir? It's marked at the  
13 bottom as Defendant's 204.

14 A. I see it.

15 Q. And is this an expense report reimbursement that you  
16 submitted?

17 A. Yes.

18 Q. And this covers the time period of January 22, 2010, to  
19 January 24, 2010, correct?

20 A. Correct.

21 Q. And this is for a business trip to El Paso for the C.F.E.  
22 Agua Prieta project meetings, correct?

23 A. Yes.

24 MS. FRANCO: Your Honor, I move --

25 BY MS. FRANCO:

1 Q. And you prepared this?

2 A. Yes.

3 Q. And you submitted it to M.P.S.A.?

4 A. Yes.

5 MS. FRANCO: Your Honor, move for admission of  
6 Defendant's Exhibit 204.

7 MR. ARREOLA: No, objection.

8 THE COURT: Defendant's 204 is admitted.

9 BY MS. FRANCO:

10 Q. Mr. Ponce, when we were looking at your expense report for  
11 December where there was a business meeting, there was two trips  
12 on the 9th and then later on the 16th, correct?

13 A. Yes.

14 Q. Do you remember that?

15 Okay. I'm going to show you what has already been  
16 admitted into evidence as Government's Exhibit 26. And this is  
17 Government's Exhibit Number 26 and this would be the travel  
18 reimbursement for Mr. Adams. Do you see that on your screen?

19 A. I see it, yes.

20 Q. And at the bottom of -- just as is your expense report,  
21 there's an entertainment meals expense account that's on the  
22 bottom of that page. Do you see it?

23 A. Would you repeat the question, please?

24 Q. You submitted a similar looking expense report. So you're  
25 familiar with the form, correct?

1 A. Yes.

2 Q. And at the bottom of the form that M.P.S.A. uses, the  
3 entertainment and business meals is at the bottom of the page,  
4 correct?

5 A. Correct.

6 Q. Do you see it?

7 And do you see where it's noted that it looks like the  
8 date is kind of cut off, but it says '09 and it has C.F.E.  
9 Vargas Gonzalez, F.G.G. Fernando Gireud, Ponce. Do you see  
10 that?

11 A. Yes.

12 Q. And it shows that he was one of the ones attending,  
13 correct?

14 A. Yes.

15 Q. And from M.P.S.A. and it looks like there was -- it says La  
16 Nueva Opera, so maybe there was some opera tickets bought. But  
17 underneath there it shows subsequent expense for  
18 \$600-and-some-odd to Casa Bell, Mexico. Do you see that?

19 A. I see it.

20 Q. And if I scroll up, do you see where it's handwritten,  
21 someone handwrote next to miscellaneous expense, it says 5,373,  
22 do you see that?

23 A. Hold on one second. Can you put the cursor near it so I  
24 can see it?

25 Q. Yes, sir, right here.

1 A. Yes.

2 Q. And can you read what that said in the handwritten note?

3 A. It says -- it is hard to read, but I can't read the top of  
4 it, but then it says gift for Marco Delgado, parenthesis, which  
5 I can't read, then F.G.G. see attached e-mail, is what it says.

6 MS. FRANCO: May I have just a moment, Your Honor?

7 THE COURT: Sure.

8 MS. KANOF: Sorry. We didn't catch the exhibit.

9 MS. FRANCO: That's Government's Exhibit Number 26,  
10 page ten.

11 Pass the witness, Your Honor.

12 THE COURT: Ms. Arreola?

13 MR. ARREOLA: May I have just a very brief moment?

14 THE COURT: Yes, ma'am.

15 MR. ARREOLA: Your Honor, may we request sidebar  
16 please?

17 THE COURT: Yes, ma'am.

18 (Bench conference.)

19 MR. ARREOLA: Can the government have a brief reset so  
20 we can try to find the Spanish language version of the document  
21 that was just shown to the witness? It's Exhibit 203. We  
22 just -- it wasn't on the exhibit list originally and it was just  
23 added this morning, and we think we should have an opportunity  
24 to pull the Spanish language version.

25 MS. KANOF: We have provided them the economic

1 proposal. It's the last page of the economic proposal and it's  
2 in Spanish. Our translator, which we also provided to them,  
3 translates that last sentence very differently. And so it's  
4 pretty critical.

5 THE COURT: Translation of what?

6 MS. KANOF: The last sentence that she -- the sentence  
7 that's in the economic proposal that's the last page of that  
8 e-mail that Mr. Delgado sent in English was provided by  
9 Mr. Delgado to C.F.E. in Spanish. We had it translated and  
10 provided it to defense counsel. The way our certified  
11 interpreter translated it is very different than the way  
12 Mr. Delgado translated it and sent it to Mr. Ponce, so we would  
13 like a minute to look for the Spanish version, and they said  
14 they couldn't find the Spanish version. We'd like them to be  
15 able to find the Spanish version if they can.

16 MS. ARREOLA: In the meantime, we're going to look to  
17 see if we can find it.

18 And Your Honor, again, this document --

19 THE COURT: You can't do it right now? You can't do  
20 it in 20 minutes so we can take our break?

21 MR. ARREOLA: Oh, certainly. I can go back to it. I  
22 don't want the witness to be excused before I look for it, but I  
23 can proceed with questions right now. Thank you, Judge.

24 (Bench concluded.)

25 COURTROOM DEPUTY DUENAS: Same exhibit.

REDIRECT PONCE

70

1 MR. ARREOLA: Yes, sir.

2 THE COURT: What exhibit is it, GX 12?

3 MR. ARREOLA: Yes, Your Honor.

4 HECTOR PONCE,

5 REDIRECT EXAMINATION BY THE GOVERNMENT

6 BY MS. ARREOLA:

7 Q. Mr. Ponce, take a look at Defense Exhibit 205?

8 A. Yes.

9 Q. And do you see the date on that document as December 8th of  
10 2009?

11 A. I see it.

12 Q. And by the time that this e-mail was dated, had F.G.G.  
13 already submitted its bid to C.F.E.?

14 A. I believe so, yes.

15 Q. I'm going to see if I can refresh your recollection. I'm  
16 going to ask you to look at Government Exhibit 11. Do you see  
17 this is an e-mail from John Adams to Mr. Gireud and copying you  
18 on November 27th?

19 A. Yes.

20 Q. I'm going to ask you to take a look at the attachment. Is  
21 this a letter dated November 27th, 2009?

22 A. Yes. Yes.

23 Q. So this letter is dated before the e-mail --

24 A. Yes.

25 Q. -- as Defense Exhibit 205 sending a copy of an F.G.G.

1 proposal; is that correct?

2 A. Yes.

3 Q. I'm going to read from this.

4 As we discussed the other day, congratulations on the  
5 receipt of the reward of the project.

6 A. Yes.

7 Q. Now, at the time that this letter was sent on  
8 November 27th, 2009, had F.G.G. shared its bid proposal with  
9 M.P.S.A.?

10 A. No.

11 Q. Okay. And was that a concern to Mitsubishi?

12 A. Yes.

13 Q. Why was that a concern?

14 A. Because the teaming agreement said very clearly that they  
15 were supposed to keep us informed of what they were submitting  
16 to the C.F.E. and that they would not be allowed to submit to  
17 the C.F.E. something other than what our specifications were  
18 saying we would supply. And you know we were concerned that  
19 they were not actually giving us originals of what they were  
20 submitting. And we were asking for originals of what was  
21 actually submitted or something showing some formality that we  
22 would be comfortable they would not submit something other than  
23 what we had proposed to them.

24 Q. And did Mitsubishi communicate their concerns that they had  
25 not seen F.G.G.'s bid prior to submission? Did Mitsubishi

1 communicate concern to F.G.G.?

2 A. In this letter, included, we're very clearly saying, we're  
3 concerned that your not keeping us informed and that you shall  
4 submit the equipment proposal to C.F.E. unchanged in any respect  
5 whatsoever, and it wasn't clear to us that that's what they  
6 would have done. We were concerned that something might have  
7 been changed.

8 Q. I'm going to now read you a paragraph from Exhibit 11 and  
9 then ask you a question.

10 We cannot understand nor accept F.G.G.'s failure to  
11 keep M.P.S.A. informed about the details of the bid, especially  
12 when we require specific information. We are especially  
13 concerned that we were not given the opportunity to review the  
14 commercial offer prior to submission to C.F.E., and now that  
15 associate contract R.D.B.S. is executed, F.G.G. is in danger of  
16 entering into such contracts which M.P.S.A. will not be able to  
17 support if they do not include our required terms and  
18 conditions. Did I read that correct?

19 A. You read it correctly.

20 Q. Okay. And I'm going to continue to the next sentence.

21 In particular, we are concerned that if liberties were  
22 taken and our terms were not specified in the bid, F.G.G. will  
23 try to seek terms from us which conflict with or are outside the  
24 teaming agreement and our proposals. We will not renegotiate  
25 any of these terms with F.G.G.



1           In the teaming agreement, was it made clear that  
2 F.G.G. was solely responsible for the letters of credit for the  
3 equipment contract?

4 A. Yes, it was clear.

5 Q. Now after this, Defense Exhibit 205 which is dated  
6 December 8th, 2009, did Mitsubishi Power Systems America and  
7 F.G.G. in fact enter into a contract?

8 A. Repeat your question.

9 Q. After Defense Exhibit 205 which is dated December 8th,  
10 2009, did Mitsubishi and F.G.G. enter into a subcontract?

11 A. Yes.

12 Q. And did that subcontract define specifically the  
13 obligations and promises of each party in that contract?

14 A. Yes.

15 Q. And did that contract impose any obligation on Mitsubishi  
16 to provide the letters of credit for the equipment contract?

17 A. No.

18 Q. And did that contain any promise by Mitsubishi to pledge  
19 its equipment in lieu of the letters of credit?

20 A. No.

21 Q. I'm going to ask you now to take a look at Government  
22 Exhibit 14. Is this an e-mail from you to Mr. Gireud copying  
23 Mr. Delgado?

24 A. Yes.

25 Q. And is this -- is the date shown December 28th, 2009?

1 A. Yes.

2 Q. And is this date after Defense Exhibit 205 which is dated  
3 December 8th, 2009?

4 A. Yes, it is.

5 Q. I'm going to read from this and then ask you a question.

6 The equipment inspection issue leads us to suspect  
7 F.G.G. may be offering existing M.P.S.A. equipment for  
8 collateral for financial guarantees that are the responsibility  
9 of F.G.G. This is unacceptable to Mitsubishi Power Systems  
10 America. Therefore, please confirm that Mitsubishi Power  
11 Systems America's equipment is not being negotiated or offered  
12 to anyone as collateral and that no liens or restrictions of any  
13 kind are being discussed with any third parties.

14 Did I read that correct?

15 A. Yes.

16 Q. I'm now I'm going to show you Government Exhibit 40 which  
17 is in evidence. Do you see that this is an e-mail from  
18 Mr. Gireud to you?

19 A. Yes.

20 Q. Do you see that Mr. Delgado is copied?

21 A. Uh-huh.

22 Q. Do you see that the date is February 11, 2010.

23 A. Yes, I do.

24 Q. And is that several months after Defendant's Exhibit 205  
25 dated December 8th, 2009?

1 A. Yes, it is.

2 Q. Do you see that attached to this e-mail is a letter on  
3 F.G.G. letterhead addressed to Mr. Adams?

4 A. Yes.

5 Q. And I'm going to read from this and ask you a question.

6 All conditions precedent and obligations post bid  
7 award have been met by F.G.G. M.P.S.A. will not be responsible  
8 for any letter of credit.

9 Did I read that correct?

10 A. Yes.

11 Q. Did anyone from F.G.G. ever show you the John Adams letter  
12 dated January 10th, 2010, which purported to authorize a pledge  
13 of Mitsubishi's equipment?

14 A. No.

15 Q. Did anyone from F.G.G. or C.F.E. ever show you the pledge  
16 challenge agreement signed with a signature by Mr. Delgado in  
17 which he pledged Mitsubishi's equipment?

18 And did anybody from Mitsubishi ever give  
19 authorization for such a pledge?

20 A. No.

21 Q. Ms. Franco also asked you if Mitsubishi terminated the  
22 contract negotiations after you became suspicious that F.G.G.  
23 was pledging the equipment. Do you recall that line of  
24 questioning?

25 A. Yes.

1 Q. After you became suspicious, did Mitsubishi in fact send  
2 notice to F.G.G. that F.G.G. was not permitted to pledge the  
3 equipment?

4 A. We did some notice, yes.

5 Q. I'm going to ask you to take a look at Government  
6 Exhibit 34. Is this an e-mail from you to Mr. Gireud?

7 A. Yes.

8 Q. Is Mr. Delgado copied on this e-mail?

9 A. Yes.

10 Q. January 12th, 2010?

11 A. Yes. Yes, it is.

12 Q. And attached to this, is there an e-mail on Mitsubishi  
13 letterhead also dated January 12th, 2010?

14 A. Yes, it is.

15 Q. And again is Mr. Delgado copied?

16 A. Uh-huh, yes.

17 Q. And then I'm going to read a sentence and ask a question.

18 We had already agreed that M.P.S.A. will not provide  
19 any letters of credit for either contract. Please confirm  
20 F.G.G. will not ask Mitsubishi Power Systems America to  
21 guarantee equipment or service obligation via any letter of  
22 credit. Did I read that correct?

23 A. Correct.

24 Q. I'm going to ask you to take a look at Government  
25 Exhibit 37. Is this an e-mail from you to Mr. Gireud?

1 A. Yes, it is.

2 Q. And is Mr. Delgado copied on this e-mail?

3 A. Yes, he is.

4 Q. And is the date January 8th, 2010?

5 A. January 18th.

6 Q. And is this following the pledge agreement that we looked  
7 at yesterday which was dated January 15, 2010?

8 A. Yes.

9 Q. And in this e-mail, do you indicate that you are requesting  
10 a response to the January 12th John Adams' letter?

11 A. Yes, I do.

12 Q. And is that letter attached to this e-mail?

13 A. Reattached, yes.

14 Q. And in that letter do you again indicate please confirm  
15 F.G.G. will not ask M.P.S.A. to guarantee equipment or service  
16 obligation via any letters of credit?

17 A. Yes, the letter says that.

18 Q. And in response to this e-mail which was dated  
19 January 18th, 2010, did Mr. Delgado write to you and say,  
20 Mr. Ponce, we just pledged the equipment. What are you talking  
21 about?

22 A. No. No, he didn't.

23 Q. Okay.

24 MR. ARREOLA: May I have a second, Your Honor.

25 THE COURT: Yes, ma'am.

1 MR. ARREOLA: Your Honor, request for sidebar.

2 THE COURT: Yes, ma'am.

3 (Bench conference).

4 MR. ARREOLA: I'm done with the questions I have, but  
5 I will like an opportunity to track down that Spanish language  
6 document.

7 THE COURT: We're about three minutes from break.  
8 We'll break now and you'll have 15 minutes.

9 MR. ARREOLA: Okay. Thank you, Judge.

10 (Bench concludes.)

11 THE COURT: All right. Ladies and gentlemen of the  
12 jury, we're going to recess for 15 minutes -- well, 17 minutes.  
13 If you'd be back in the jury room at 11:30, we'll resume our  
14 proceedings then.

15 COURTROOM SECURITY OFFICER HEIDTMAN: All rise.

16 (Break at 11:15 a.m. to 11:33 a.m.)

17 (Open court. Defendant and counsel present.)

18 (Jury present.)

19 THE COURT: Let the record reflect that all members of  
20 the jury are present, the United States through its assistant  
21 United State's attorneys are present, the defendant and his  
22 attorney is present.

23 Mr. Ponce is on the witness stand.

24 Ms. Arreola?

25 MR. ARREOLA: Your Honor, the government passes the

1 witness.

2 HECTOR PONCE,

3 RE CROSS-EXAMINATION BY THE DEFENDANT

4 BY MS. FRANCO:

5 Q. We went over the various correspondence from when the  
6 teaming agreement was signed through the -- and past the  
7 execution of the subcontract. You recall that, correct?

8 A. Yes.

9 Q. And at no point in time did M.P.S.A. back out of the deal  
10 with F.G.G., did it?

11 A. Correct.

12 Q. While you were with -- employed as a consultant, correct?

13 A. That is correct.

14 MS. FRANCO: Pass the witness, Your Honor.

15 THE COURT: Ms. Arreola?

16 MR. ARREOLA: No further questions, Your Honor.

17 MS. KANOF: May this witness be excused?

18 THE COURT: May Mr. Ponce be permanently excused?

19 MS. FRANCO: Yes, Your Honor.

20 THE COURT: And the government is excusing him as  
21 well.

22 MS. KANOF: (Nodding head affirmatively.)

23 THE COURT: Thanks for coming down.

24 THE WITNESS: Thank you very much.

25 (Witness excused.)

DIRECT BROWN

80

1 THE COURT: Who is your next witness?

2 MS. KANOF: Jennifer Brown.

3 This witness has not been sworn, Your Honor.

4 (Witness present and sworn.)

5 THE COURT: Ms. Kanof?

6 MS. KANOF: Thank you, Your Honor.

7 JENNIFER BROWN,

8 DIRECT EXAMINATION BY THE GOVERNMENT

9 BY MS. KANOF:

10 Q. Good morning.

11 A. Good morning.

12 Q. Could you state your name for the jury please?

13 A. Jennifer Brown.

14 Q. How are you employed?

15 A. I'm employed at AOL.

16 Q. What is AOL?

17 A. They are an internet service provider, e-mail provider.

18 Q. An e-mail provider; is that correct?

19 A. Yes.

20 Q. And are they one of the oldest?

21 A. Yes.

22 Q. Have they sort of moved into other services as well?

23 A. Advertising mostly now.

24 Q. How long have you worked for AOL?

25 A. 20 years.

KATHLEEN A. SUPNET, CSR



1 Q. And when you first started 20 years ago, what were your  
2 duties and responsibilities at AOL?

3 A. I actually started off in the call center and I took  
4 inbound technical support calls.

5 Q. And how long did you do that?

6 A. About eight years.

7 Q. Where was your position located?

8 A. Located in Tucson, Arizona.

9 Q. And after you finished with the call center, what happened?

10 A. I was promoted to northern Virginia into the network  
11 operations center.

12 Q. Where in northern Virginia?

13 A. Dulles, Virginia.

14 Q. Is that one of the big airports outside of Washington D.C.?

15 A. Yes, it is.

16 Q. About what year did you move to Dulles, Virginia?

17 A. 2001.

18 Q. And when you said you were promoted, what position were you  
19 promoted to?

20 A. I was a network analyst.

21 Q. What is a network analyst?

22 A. I monitor the network. People that would dial into modems,  
23 I made sure that they stayed connected, and if they didn't I  
24 fixed it.

25 Q. And how did you learn to do all of the requirements of your

1 job?

2 A. It's all in-house training.

3 Q. AOL provided that training for its employees?

4 A. Yes, they did.

5 Q. How long did you do network monitoring?

6 A. For about five years.

7 Q. And then what happened?

8 A. I was promoted into the legal department.

9 Q. And is that where you are now?

10 A. Yes, it is.

11 Q. So how long have you been in the legal department?

12 A. Since 2005.

13 Q. And what kind of service -- so 2005, would that be about  
14 11 years?

15 A. Yes.

16 Q. What kind of service does the legal department of AOL  
17 provide to the courts?

18 A. We -- I'm a custodian of records and we process subpoenas  
19 and search warrants that get served.

20 Q. In this case did you provide a self-proving affidavit with  
21 regard to the -- I don't think we actually asked you for  
22 records -- but -- so if a subpoena is served on AOL, what is  
23 your job?

24 A. I read over it, make sure it's legal and respond with  
25 whatever data they want.

1 Q. And if a search warrant is served, what do you do?

2 A. Just process it and give the data back.

3 Q. Do you also -- is it also part of your job to testify in  
4 trial?

5 A. Yes, it is.

6 Q. So are you here as part of your job?

7 A. Yes, I am.

8 Q. And you were subpoenaed to testify; is that correct?

9 A. I was, yes.

10 Q. Now you said that you worked for years in Dulles, Virginia;  
11 is that correct?

12 A. That is correct.

13 Q. Why Dulles, Virginia?

14 A. That's where everything is located.

15 Q. When you say everything, let me ask you a little bit about  
16 the equipment.

17 Are you fully familiar with the equipment that is used  
18 by AOL in order to transmit e-mails?

19 A. Yes.

20 Q. Okay. In order to fulfill your job responsibilities?

21 A. Correct.

22 Q. What is a server?

23 A. It is what sends and delivers e-mail.

24 Q. And where are AOL's servers located?

25 A. Dulles, Virginia.

1 Q. Does AOL have servers anywhere else in the United States?

2 A. No.

3 Q. If an individual sends an e-mail from anywhere in the world  
4 and uses an AOL provider, has an account, does that e-mail have  
5 to go through Dulles, Virginia?

6 A. Yes, it does.

7 Q. I'm going to draw your attention to what has been marked  
8 and admitted into evidence as Government Exhibit Number 40.

9 MS. KANOF: Ask that it be displayed.

10 BY MS. KANOF:

11 Q. Do you see it in front of you?

12 A. I do.

13 Q. You don't have to know anything about this, but on the cc  
14 line, do you see an AOL Internet address?

15 A. I do, yes.

16 Q. And how does someone acquire an AOL Internet address?

17 A. They just register for the service.

18 Q. And if an e-mail is transmitted by AOL as an internet  
19 provider, how is it transmitted through the wires?

20 A. It goes from one computer to the servers and delivers to  
21 whatever computer at the end.

22 Q. Looking at this e-mail, say hypothetically the person who  
23 sent it, this Fernando person, was sitting next to this person  
24 Delgado, who was copied on it, and neither of them were in  
25 Virginia, let's say -- well, no -- yes, neither of them were in

1 Virginia, would that communication still have had to go through  
2 the server in Virginia?

3 A. Yes.

4 Q. If they were sitting next to each other in El Paso, Texas,  
5 would it have to have traveled?

6 A. Yes.

7 Q. What is the only way that a transmission through AOL would  
8 not have to pass through different states in the United States?

9 MR. HANSHEW: Your Honor, ask if we can approach  
10 briefly?

11 THE COURT: Yes, sir.

12 (Bench conference.)

13 MR. HANSHEW: It appears this is expert testimony.  
14 They agreed in the motion in limine that they wouldn't bring  
15 them in.

16 MS. KANOF: This is not expert testimony. I'm sorry.  
17 But it's not -- we usually get a stipulation. She has knowledge  
18 as an employee. This is what she does for a living.

19 THE COURT: Right, but she has knowledge as an  
20 employee greater than that of a regular person. You become an  
21 expert by training, experience, all of the things that are  
22 listed in Rule 702. Experience is one of those. She has  
23 knowledge that the ordinary human being doesn't have. She can  
24 testify to what she does, but what she is going into, to me, is  
25 expert.

1 MS. KANOF: It's not scientific. It's lay expertise.

2 THE COURT: I'm just going to get you the rule.

3 MR. ARREOLA: She's saying the servers in Virginia.

4 MS. KANOF: That's not what he's saying.

5 Your Honor, how about if I just -- just say that she  
6 observes that there are wires plugged into the service instead.

7 THE COURT: Yeah, that's -- that's --

8 MS. KANOF: Then I don't mine.

9 MR. HANSHEW: Ask to strike her testimony.

10 THE COURT: The objection came a little late for that,  
11 but I'll sustain your objection. The witness is qualified by  
12 knowledge, skill, experience, training or education; testify as  
13 to expert scientific, technical or other specialized --

14 MS. KANOF: I'll phrase it in other terms.

15 MR. HANSHEW: Judge, we reiterate our request and  
16 strike the previous testimony.

17 (Bench concludes.)

18 BY MS. KANOF:

19 Q. Again, Ms. Brown, let me ask you, are there servers  
20 anywhere else other than Virginia?

21 A. They are not.

22 Q. Have you been in the physical room where the servers are  
23 located?

24 A. I have, yes.

25 Q. Are they plugged into the wall?

DIRECT BROWN

87

1 A. Yes, they are.

2 Q. And do they use electricity when they are plugged in the  
3 wall?

4 A. Yes.

5 Q. Has any -- if they were not plugged into the wall, could  
6 AOL provide the services that AOL provides to their customers?

7 A. No.

8 MS. KANOF: Pass the witness.

9 THE COURT: Mr. Hanshew?

10 MR. HANSHEW: No questions, Your Honor.

11 THE COURT: May Ms. Brown be permanently excused?

12 MS. KANOF: Yes, Your Honor.

13 MR. HANSHEW: Yes, Your Honor.

14 THE COURT: Ms. Brown, you may go.

15 (Witness excused.)

16 THE COURT: Who's your next witness?

17 MS. ARREOLA: Your Honor, the government calls Kenneth  
18 LeCense.

19 (Witness present and sworn by the Court.)

20 KENNETH LECENSE,

21 DIRECT EXAMINATION BY THE GOVERNMENT

22 BY MS. ARREOLA:

23 Q. Please introduce yourself to the jury.

24 A. Kenneth LeCense.

25 Q. How are you employed, sir?

KATHLEEN A. SUPNET, CSR

1 A. I work for T-Mobile Metro P.C.S. cellular cel phone  
2 company.

3 Q. Are you assigned to any particular division or section at  
4 T-Mobile?

5 A. Yes, sir -- yes, ma'am. I'm sorry.

6 Q. What section is that?

7 A. I'm assigned to the subpoena compliance unit, law  
8 enforcement relations team.

9 Q. What are your duties and responsibilities as a member of  
10 that section?

11 A. My official title is records custodian slash testifier.  
12 I'm assigned to that unit. That is the unit that receives.  
13 It's in Richardson, Texas. It's a unit that receives legal  
14 demands in form of subpoenas, court records, search warrants  
15 requesting records from Metro, T-Mobile Metro PCS telephone  
16 company. Normally, I'm in court testifying in court. When I'm  
17 not in court, I do process those legal demands that come into  
18 the company and send them back to the requesting attorney's  
19 office, insurance company, law enforcement agencies that make  
20 the request.

21 Q. I'm going to ask you to take a look at Government  
22 Exhibit 27?

23 A. Yes, ma'am.

24 Q. Can you see this on the screen or is it too small?

25 A. I can see it here.



1 Q. Do you recognize this?

2 A. Yes, ma'am.

3 Q. What is it?

4 A. This is customer billing records for the customers  
5 Mitsubishi Power Systems, Inc., with the account number and the  
6 corporate ID of the records.

7 Q. Who, if anybody, at T-Mobile or who if anybody at T-Mobile  
8 provides these types of documents to?

9 A. Directly to the customer at the customer's request.

10 Q. Now did you print this particular document yourself?

11 A. I printed this document and also an exhibit.

12 Q. I'm sorry, sir. I think you misunderstood my question.

13 Did you print -- did you print this document from the  
14 T-Mobile system yourself or provided to you by somebody else?

15 A. Provided by someone else.

16 Q. Is that the government?

17 A. The government, yes.

18 Q. So you haven't verified the information in this document;  
19 is that correct?

20 A. That's correct.

21 Q. Okay. I'm going to ask to you take a look at the top of  
22 the page.

23 MR. ARREOLA: And Your Honor, just so the record is  
24 clear, defense counsel stipulated to the authenticity of this  
25 document. It's already been admitted.

1 BY MS. ARREOLA:

2 Q. Mr. LeCense, does this document identify who the customer  
3 is?

4 A. Yes, ma'am.

5 Q. And who is that?

6 A. It's in the upper right-hand corner, Mitsubishi Power  
7 Systems, Inc. It's abbreviated, the incorporated portion.

8 Q. What are the numbers in the left-hand side of the page?

9 A. It is account charges for multiple phone numbers that are  
10 associated with this account, with the Mitsubishi account.

11 Q. So would that be, for example, different employees of  
12 Mitsubishi who have different phones under this account number?

13 A. It could be, yes, ma'am.

14 Q. Okay. And I'm going to turn to the third page. What  
15 information is shown on this document?

16 A. This is a specific statement for a specific phone number  
17 associated with Mitsubishi Power Systems in this account.

18 Q. So would this be one --

19 MR. HANSHEW: Object that this is going to be expert  
20 testimony again. He's testifying based on his specialized  
21 knowledge of what these documents are to reach conclusions of  
22 fact.

23 THE COURT: Let me hear the question and we'll see.

24 MR. ARREOLA: Oh, was there a question pending? I  
25 don't recall, Your Honor.

1 THE COURT: Your question was, this is a specific  
2 statement -- no, that's the answer. So would you -- and then  
3 Mr. Hanshaw objected. That's what's pending.

4 BY MS. ARREOLA:

5 Q. Would this page reflect one phone number for the Mitsubishi  
6 account, for example, one phone number of the many that appear  
7 on the first page?

8 A. That's correct.

9 MR. HANSHEW: Objection, Your Honor. Same objection.

10 THE COURT: Overruled.

11 BY MS. ARREOLA:

12 Q. I'm going to now turn a few pages ahead.

13 I'm going to ask you about this page. Do you see the  
14 word roaming charges?

15 A. Yes, ma'am.

16 Q. What are roaming charges?

17 MR. HANSHEW: Objection, Your Honor. Expert  
18 testimony.

19 MR. ARREOLA: Your Honor, the government is not asking  
20 for an opinion or an analysis. We're simply asking for him what  
21 roaming charges are.

22 THE COURT: I'm going to overrule that objection.

23 BY MS. ARREOLA:

24 Q. What are roaming charges, sir?

25 A. Roaming charges is when a customer is using their phone and

1 their actually using different cell towers as opposed to the  
2 T-Mobile cell towers, the CT-mobile network.

3 Q. Now towards the top of the page it says Mexico tell Cal?

4 A. Yes, ma'am. That identifies the cell towers that were  
5 being used for these roaming charges on this particular time  
6 during this time period.

7 Q. And further down on the page it says, Mexico (Spanish) PCS.  
8 What is that?

9 A. That is a different set of cell towers that were being used  
10 during the certain period of time during the dates.

11 MR. HANSHEW: We'd have a continuing objection, so I  
12 don't have to interrupt.

13 THE COURT: And it's overruled as long as it's this  
14 same line. Anything else you can object.

15 MR. ARREOLA: Your Honor, can I hear back to see what  
16 the witness said?

17 THE COURT: "That is a different set of cell towers  
18 that were being used during the certain period of time during  
19 the dates."

20 BY MS. ARREOLA:

21 Q. And where are those cell towers located, if you know?

22 A. Mexico.

23 Q. Would somebody, who's in the U.S., be charged roaming fees  
24 for a roaming fee in 2009 and to 2010? Only if you now the  
25 answer.

1 MR. HANSHEW: Objection, Your Honor.

2 MR. ARREOLA: I'll withdraw the question, Your Honor.

3 BY MS. ARREOLA:

4 Q. I'm going to ask you to take a look at Government  
5 Exhibit 28. Is this also a type of customer service record,  
6 sir?

7 A. That's a customer billing record.

8 Q. And who's the customer?

9 A. Mitsubishi Power Systems, Inc.

10 Q. Okay. And what is the time frame indicated on this  
11 document?

12 A. On this particular document, they start at the very top in  
13 the upper left-hand corner. The customer service when these  
14 records were actually sent to the customer was January 28, 2010.

15 Q. Okay. So that would be the billing period, the end of the  
16 billing period?

17 A. That's correct during that billing period.

18 Q. All right. And then again it says Mexico Telcel, what  
19 would that date?

20 A. That would indicate on the two dates under Mexico Telcel  
21 that the Mexico Telcel towers were being used for the phone  
22 calls.

23 MR. ARREOLA: No further questions, Your Honor.

24 THE COURT: Mr. Hanshew?

25 MR. HANSHEW: No questions, Your Honor.

1 THE COURT: May Mr. LeCense be permanently excused?

2 MR. HANSHEW: Yes, Your Honor.

3 MR. ARREOLA: Thank you, Judge. Yes, Your Honor.

4 THE COURT: Mr. LeCense, you are free to go.

5 (Witness excused.)

6 THE COURT: Your next witness?

7 MR. ARREOLA: Your Honor, the government calls Joseph  
8 Gliva.

9 (Witness present and sworn by the Court.)

10 THE COURT: Ms. Arreola?

11 MR. ARREOLA: Your Honor, the government offers what's  
12 been marked for identification as Government Exhibits 143 and  
13 158.

14 THE COURT: These are Wells Fargo records?

15 MR. ARREOLA: Which are accompanied by a self-proving  
16 affidavit.

17 THE COURT: Who is it going to be, Ms. Franco or  
18 Mr. Hanshaw?

19 MR. HANSHEW: No, objection.

20 THE COURT: All right. Government 143 is admitted.  
21 Government 158 is admitted.

22 JOSEPH GLIVA,

23 DIRECT EXAMINATION BY THE GOVERNMENT

24 BY MS. ARREOLA:

25 Q. Please introduce yourself to the jury.

1 A. My name is Joe Gliva. I am Senior Vice President  
2 Technology Manager for Wells Fargo bank currently in  
3 Philadelphia.

4 Q. How are you employed, sir?

5 A. I'm technical manager at Wells Fargo responsible for the  
6 funds transfer, international funds transfer computer systems.

7 Q. Are you assigned to any particular division at Wells Fargo?

8 A. Yes. It's the Enterprise Information Technology Division.  
9 It is responsible for all of the computer applications at Wells  
10 Fargo and I specifically support the International Global  
11 Financial Institution Business.

12 Q. I apologize if I didn't say this earlier. Did you state  
13 your title?

14 A. Senior Vice President Technology Manager.

15 Q. How long have you been a senior vice president and  
16 technology manager?

17 A. I've begun senior vice president technical manager since  
18 about 1998 with Wells Fargo. From 2008 I was with -- with a  
19 Wachovia Bank, which was acquired by Wells Fargo in 2008.

20 Q. And as part of your duties and responsibilities as a senior  
21 vice president and technology manager, do you do any work with  
22 international fund transfers?

23 A. Yes, I do. I support the system that processes those  
24 transactions.

25 Q. I'm going to ask you to take a look at Government Exhibit

1 Number 143.

2 What type of document is this, sir?

3 A. This is a document report from the International Funds  
4 Trust Application that shows a transaction that was executed and  
5 all of its details.

6 Q. And what is an International Funds Transfer System that you  
7 just mentioned?

8 MR. HANSHEW: Objection, Your Honor. Looking at this  
9 document and questions already heard is going to get into what  
10 the meaning of all of these is behind all of this information  
11 is. We've already heard he's a senior technological adviser.  
12 This is clearly within the realm of expert testimony, Jude. No  
13 lay person could ever look at this document and explain it and  
14 that's what they're trying to do.

15 MR. ARREOLA: Your Honor, may I be heard? The  
16 governments not going to be asking for any opinion or analysis  
17 by the witness. And the government anticipates that he will  
18 testify that he actually developed this application, so he has  
19 firsthand knowledge about what this means.

20 THE COURT: Right. I'm going to overrule the  
21 objection for now. If it goes beyond that which is in the  
22 expert area then I'll sustain the objection.

23 BY MS. ARREOLA:

24 Q. You were explaining what the I.T.F. system is.

25 A. Yes. At the International Funds Transfer application that



1 processes payments that come into Wells Fargo bank.

2 Q. Okay. And what transfers reflected, if any, on this page?

3 A. This transaction shows a payment for \$20 million from -- I  
4 can't see the customer. Can you slide to the right? From the  
5 Bank of -- Banco Nacional to -- I can't see.

6 Q. I'm going to pull it up on the other screen. Give me one  
7 second.

8 MR. HANSHEW: Your Honor, re-urge my objection at this  
9 point. Again they provided no notice of experts.

10 THE COURT: I got your objection. It's still  
11 overruled.

12 MR. HANSHEW: Would you like me to assert it each  
13 question?

14 THE COURT: Not if it's the same nature.

15 MR. HANSHEW: Thank you, Judge.

16 BY MS. ARREOLA:

17 Q. So you were saying what transfer, if any, is reflected on  
18 this page.

19 A. Yes. This is a transaction from fideicomiso gastos to  
20 Skippings and Rutley. And the originating customer went through  
21 the Banco Nacional to pay Skippings and Rutley through First  
22 Caribbean International, which is a customer first -- at Wells  
23 Fargo.

24 Q. And what is the date on the amount of the transaction?

25 A. It's \$20 million dated March 8th, 2010.

1 Q. Okay. Now does this printout come from the International  
2 Funds Transfer System?

3 A. Yes, it does.

4 Q. Who developed that system at Wells Fargo?

5 A. I was one of the original team members.

6 Q. And that system is still being used today?

7 A. Yes.

8 Q. Who is the originating bank on this document?

9 A. What you see there is a SWIFT identifier that identifies  
10 Banco Nacional.

11 Q. And who is listed as the receiving bank?

12 A. The receiving bank is the First Caribbean International.

13 THE COURT: Where is this?

14 BY MS. ARREOLA:

15 Q. Sir, can you highlight, point out where you are looking?

16 A. The Banco Nacional is the originating bank. Right there,  
17 that is an identifier for the Banco Nacional. The receiving  
18 bank of the transaction is right here, First Caribbean  
19 International.

20 Q. Can you identify for the jury where the amount and  
21 transaction is shown on the document?

22 A. Okay. The amount of the transaction is right here, 20  
23 million, and the date of the transaction is March 8th, 2010.

24 Q. Okay. Now, does this document indicate any other banks  
25 that were involved in the transfer?

1 A. Yes, it does. There are two intermediary banks that are  
2 part of the transaction.

3 The first one is a standard charter bank, which is  
4 right below the \$20-million amount, right here, and the second  
5 one, which isn't there is obviously Wells Fargo, as we received  
6 the transaction.

7 Q. Okay. So if the originating bank is Bancomext and the  
8 receiving bank is First Caribbean, why are two banks involved?

9 MR. HANSHEW: Objection, Your Honor.

10 THE COURT: I don't know how he sees that, unless he  
11 has some expertise, because that's not something that we would  
12 know, at least I wouldn't. I'm going to sustain the objection.

13 MR. ARREOLA: Your Honor, may we be heard on sidebar?

14 THE COURT: Sure.

15 (Bench conference.)

16 MR. ARREOLA: Your Honor, the government's position is  
17 that the custodians of the record are not experts and this  
18 witness --

19 THE COURT: You can introduce the record. It's  
20 already in evidence. But he can't tell us what it is as to  
21 custodian. He's now telling us what that means. Now he's going  
22 to tell us how somehow the international banking system in the  
23 document. There's no way you or I know how that works, unless  
24 you have expertise in that field.

25 MR. ARREOLA: Your Honor, the government submits that

1 because of where he's worked, he has personal knowledge about  
2 how these things operate.

3 THE COURT: Right. And he's got experience and  
4 training which is covered by --

5 MR. ARREOLA: He's not offering any sort of opinion or  
6 analysis. He's stating what he observes as a person of his  
7 employment.

8 THE COURT: It doesn't have to be. Expert scientific,  
9 technical, specialized knowledge, that's the rule.

10 MR. ARREOLA: Can the government have a few minutes to  
11 convene about this?

12 THE COURT: Sure. Do we need to take a recess?

13 MS. KANOF: Yes.

14 THE COURT: All right.

15 (Bench concludes.)

16 THE COURT: Ladies and gentlemen of the jury, we're  
17 going to recess for about ten minutes. If you'd be back in the  
18 jury room in ten minutes.

19 COURTROOM SECURITY OFFICER HEIDTMAN: All rise.

20 (Break at 12:06 p.m. to 12:17 p.m.)

21 (Open court. Defendant and counsel present.)

22 (Jury present.)

23 THE COURT: Be seated please.

24 Let the record reflect that all members of the jury  
25 are present, the United States through its assistant United

1 State's attorneys are present, the defendant and his attorney is  
2 present.

3 The witness, Mr. Gliva is on the witness stand.

4 Ms. Arreola?

5 BY MS. ARREOLA:

6 Q. According to this document, Mr. Gliva, where did this wire  
7 transfer originate from?

8 MR. HANSHEW: Objection, Your Honor. This calls for  
9 expert testimony again.

10 THE COURT: I'll overrule that objection.

11 A. The wire transfer originated from (indiscernible) gastos.

12 THE COURT: Can you show us that on the document?

13 A. Yes. This is the originating customer. This is the person  
14 who requested the funds transfer.

15 BY MS. ARREOLA:

16 Q. And what was the originating bank?

17 A. The originating bank is Banco Central. This is a code for  
18 Banco Central.

19 Q. What's the destination of these funds according to this  
20 document?

21 A. The destination of these funds is First Caribbean  
22 International Bank.

23 Q. Okay. Now I'm going to go down to the next document on the  
24 next page of this document. Can you identify where this  
25 document indicates the dates and the amounts of the transaction

1 shown here?

2 A. Yes. The date of the transaction is right here, July 6th,  
3 2010, and the amount of the transaction is \$12 million.

4 Q. According to this document, where did this wire transfer  
5 originate from?

6 MR. HANSHEW: Objection, Your Honor. Expert.

7 THE COURT: Overruled.

8 BY MS. ARREOLA:

9 A. Fideicomiso Gastos, here.

10 Q. What is the name of the originating bank?

11 A. Again, originating bank was Banco Central.

12 Q. And what was the -- what was its destination?

13 A. Destination is First Caribbean International Bank.

14 Q. Where does Wells Fargo keep its servers or wire transfers?

15 A. North Carolina and Alabama.

16 MR. ARREOLA: May I have a moment, Your Honor?

17 THE COURT: Yes, ma'am.

18 BY MS. ARREOLA:

19 Q. Sir, is Banco Nacional in Mexico?

20 A. Yes.

21 Q. And First Caribbean is in the Turks and Caicos Islands?

22 A. Yes.

23 MR. ARREOLA: Your Honor, the government passes the  
24 witness.

25 THE COURT: Mr. Hanshaw?

1 MR. HANSHEW: No questions, Your Honor.

2 THE COURT: May Mr. Gliva be permanently excused?

3 MR. HANSHEW: Yes, Your Honor.

4 THE COURT: Ms. Arreola?

5 MR. ARREOLA: Yes, Your Honor.

6 THE COURT: All right.

7 Mr. Gliva, thanks for coming down. You are excused,  
8 free to go.

9 (Witness excused.)

10 THE COURT: All right. Who is your next witness?

11 MS. KANOF: Linda Medlock.

12 (Witness present.)

13 MS. KANOF: This witness has not been sworn, Your  
14 Honor.

15 (Witness sworn by the court.)

16 LINDA MEDLOCK,

17 DIRECT EXAMINATION BY THE GOVERNMENT

18 BY MS. KANOF:

19 Q. Good afternoon, Ms. Medlock. Could you state your name for  
20 the jury, please?

21 A. Linda Medlock.

22 Q. And the microphone is very adjustable. If you need to pull  
23 it around so you can see the screen and talk at the same time,  
24 okay, and there's water for you there if you need it.

25 What do you do for a living?

1 A. CPA.

2 Q. What does that mean?

3 A. Certified public accountant.

4 Q. How long have you been a CPA?

5 A. Since 1982.

6 Q. Where are you from?

7 A. England.

8 Q. Okay. When did you come to the United States?

9 A. In 1971.

10 Q. Were you educated here in the United States?

11 A. Partially.

12 Q. And did you receive your CPA here in the United States?

13 A. Yes.

14 Q. Do you practice certified public accounting here in  
15 El Paso, Texas?

16 A. Yes.

17 Q. For how long have you practiced as a CPA in El Paso?

18 A. Since 1982.

19 Q. Do you have your own business?

20 A. Yes.

21 Q. How long?

22 A. Since 1992.

23 Q. If you could speak up just a --

24 A. 1992.

25 Q. It's most important the court reporter and jury hear you?



1 A. Okay.

2 Q. Since 1992?

3 A. Yes.

4 Q. Do you currently have a CPA business?

5 A. Yes, but I am semi-retired.

6 Q. In the year 2009 -- well, let's go a little bit earlier.

7 Between 2008 and 2012, where was your business  
8 located?

9 A. 7362 Remcon Circle.

10 Q. And what kind of a building is that?

11 A. It's called the intelligent office.

12 Q. What does that mean, the intelligent office?

13 A. It's a franchise and you can either get permanent offices  
14 in there or you can have what they call virtual.

15 Q. What kind of office did you have?

16 A. Permanent.

17 Q. And had -- when did you first take a permanent office in  
18 the Remcon building?

19 A. 2001, when it was first constructed.

20 Q. Did you actually own that building?

21 A. No.

22 Q. And how many suits did your CPA firm occupy?

23 A. Two.

24 Q. And at some point in time did you meet an individual named  
25 Marco Delgado?

1 A. Yes.

2 Q. Is he here in the courtroom?

3 A. Yes.

4 Q. Could you identify him and say this is person number one,  
5 two or three?

6 A. Number two.

7 MS. KANOF: May the record reflect, Your Honor, the  
8 witness has identified the defendant?

9 THE COURT: Any objection?

10 MS. FRANCO: No, objections.

11 THE COURT: All right. There being no objection, the  
12 record will so reflect.

13 BY MS. KANOF,

14 Q. Before we start your testimony, Ms. Medlock, did you hire  
15 an attorney in light of your testimony that ultimately led to  
16 your testimony in this case?

17 A. Yes.

18 Q. And who is that?

19 A. Mary Stillinger.

20 Q. How did it come about that you hired an attorney?

21 A. You want the whole story now? I mean, I -- I came a little  
22 concerned about the situation, so I called my corporate attorney  
23 and explained to her and she said it would be all right, but  
24 then the next morning she called me and said Mary Stillinger is  
25 expecting a call from you.

1 Q. And when you went to Mary Stillinger, where did she take  
2 you or who did she have you talk with?

3 A. The FBI.

4 Q. And when you started to talk, did she request a document  
5 from you called a proffer letter?

6 A. Yes.

7 Q. Okay. Did you think you'd done anything wrong?

8 A. No.

9 Q. But did you sign this letter?

10 A. Yes.

11 Q. And why did you sign the letter?

12 A. I was advised to.

13 Q. By your attorney, Ms. Stillinger?

14 A. Yes.

15 Q. Now let's proceed.

16 When did you first meet Mr. Delgado?

17 A. 2010.

18 Q. And how did you meet him?

19 A. He approached me in my office.

20 Q. Had you ever seen him before he approached you in your  
21 office?

22 A. I may have seen him around, but I don't remember.

23 Q. Did he have an actual office at Remcon?

24 A. No.

25 Q. And how do you know that?

1 A. Because I paid his bills.

2 Q. Okay. When he approached you, why did he approach you?

3 A. He needed some help, because he traveled a lot in his job.

4 Q. What did he say to you when he approached you?

5 A. Would I be interested in helping him in his business.

6 Q. Okay. And what exactly did he want you to do?

7 A. Pay his bills, take care of his situation while he was  
8 gone.

9 Q. Did he say why he needed someone to pay his bills while he  
10 was gone?

11 A. Because he traveled a lot.

12 Q. And was there anything happening to him financially that  
13 resulted in his leave for assistance?

14 A. Well, he was late many times because he wasn't there.

15 Q. Is that what he said to you?

16 A. Yes.

17 Q. And was his -- did he explain why being late caused him  
18 concern?

19 A. Well for his credit and also for the penalties.

20 Q. The penalties?

21 A. Yes.

22 Q. So when he -- where were you when he approached you?

23 A. In my office.

24 Q. And did you agree?

25 A. Yes.

1 Q. Did you enter into a formal written contract or just an  
2 oral agreement?

3 A. Oral.

4 Q. And did you have a discussion with him exactly what he  
5 wanted you to do?

6 A. Yes.

7 Q. And then how did you proceed?

8 A. Time lapsed a little and then he asked me to open a bank  
9 account with him.

10 Q. Between the time that he first engaged you -- in addition  
11 to paying these bills, did he want you to do his personal income  
12 taxes?

13 A. Yes.

14 Q. And did he ask you to do that on the first meeting or  
15 sometime later, if you can recall?

16 A. On the first meeting.

17 Q. Okay. Are you also a tax accountant? Do you do peoples'  
18 taxes?

19 A. Yes.

20 Q. And you said sometime lapsed between his first engagement,  
21 but and then something about a bank account?

22 A. Yes.

23 Q. What did he ask you about a bank account?

24 A. Well, so I could pay his bills, I had to open a bank  
25 account.

1 Q. Why would you have to open a bank account to pay his bills?

2 Did he not have a bank account already?

3 A. That, I don't know, but he you know there had to be one  
4 with my name so I could sign the checks.

5 Q. What did you advise him?

6 A. We agreed to meet at Wells Fargo to open a joint account.

7 Q. Which one?

8 A. The one on Redd Road.

9 Q. Okay. And did you set a specific time to meet?

10 A. Yes.

11 Q. Did you do this in person or telephonically? If you can't  
12 recall, that's fine.

13 A. I can't remember.

14 Q. So did you go to Wells Fargo?

15 A. Yes.

16 Q. And did Mr. Delgado go to Wells Fargo?

17 A. No.

18 Q. Explain to the jury what happened.

19 A. I went to Wells Fargo to open an account so I could pay his  
20 bills and he was supposed to meet me there and he didn't come.  
21 So he advised me that he needed some funds transferred because  
22 the following day he had to do some traveling.

23 Q. How did he advise you? You are waiting for him and what  
24 are you doing when he's not showing up? What acts did you  
25 engage in?

1 A. I'm talking to the banker.

2 Q. Okay.

3 A. And he was calling.

4 Q. Calling you or the banker?

5 A. I can't remember.

6 Q. Okay. But somehow it was communicated that he needed -- he  
7 was going to have funds transferred; is that correct?

8 A. Yes.

9 Q. And what happened next?

10 A. The banker advised me the only way the funds could be  
11 transferred were for me to open the account in my name only and  
12 then he could sign later.

13 Q. So he could add his signature to the account later; is that  
14 correct?

15 A. Yes.

16 Q. Did you accommodate that need for him?

17 A. Yes.

18 Q. When you talked to him on the phone that day, what did he  
19 promise you about putting his name on the account?

20 A. He would go.

21 MS. FRANCO: Objection, Your Honor. She couldn't  
22 recall if she was speaking to the banker or Mr. Delgado.

23 BY MS. KANOF:

24 Q. Did you talk to Mr. Delgado that day?

25 A. Yes.

1 Q. And did he make any representations to you about putting  
2 his name on the account?

3 A. Yes, he did.

4 Q. What did he say?

5 A. He said he would go down to Wells Fargo and sign.

6 Q. Did he?

7 A. No.

8 Q. Did he ever?

9 A. No.

10 Q. During the whole time that you were paying his bills out of  
11 the account, did you repeatedly ask him to go put his signature  
12 on the account?

13 A. Yes.

14 Q. Did he?

15 A. No.

16 Q. Okay. So, did that transfer?

17 A. Yes.

18 Q. Do you recall what date it was?

19 A. I know we opened the account on October 26th, so it must  
20 have been the day or the day after that.

21 Q. I'm going to show you Government Exhibit Number 145.

22 MS. KANOF: Your Honor, we have a self-proving  
23 affidavit for Government Exhibit Number 145 and move it into  
24 evidence.

25 THE COURT: Ms. Franco?



1 MS. FRANCO: No objection, Your Honor.

2 THE COURT: 145 is admitted.

3 BY MS. KANOF:

4 Q. It's going to be displayed on the screen in front of you.

5 A. Yes.

6 Q. It's Government Exhibit Number 145.

7 A. Yes.

8 Q. And do you recall the account number? Does it look  
9 familiar to you. Let me scroll down just a little bit for you.

10 A. Yes.

11 Q. In fact, is your -- does your name appear on the account?

12 A. Yes, it does.

13 Q. Okay. And you previously testified he -- he required you  
14 to open the account, because he was going to be receiving a  
15 funds transfer?

16 A. Yes.

17 Q. Did you learn that Mr. Delgado already had an account at  
18 Wells Fargo?

19 A. I wasn't aware of it.

20 Q. On that date?

21 A. On that date.

22 Q. Okay. And in fact, the beginning balance it appears is how  
23 much? This is the day you open the account, correct?

24 A. Zero.

25 Q. Okay. And then is there a deposit that occurs fairly

1     shortly after that?

2     A.    Yes.

3     Q.    Of how much money?

4     A.    I'm sorry, If I can get my glasses.

5     Q.    Oh, of course. Do you have them there with you?

6     A.    In my bag.

7     Q.    We've been trying to make it difficult. Does that help?

8     A.    It's still a little blurry.

9     Q.    Let me see if I can find his name. I found his name, but I  
10    don't want to screw it up. There you go. Better?

11    A.    Yes, thank you.

12    Q.    A deposit occurred, and if we scroll down just a little  
13    bit, do you see the date of the deposit?

14    A.    10-26.

15    Q.    And where did the money come from?

16    A.    First Caribbean International.

17    Q.    How much money?

18    A.    150,000.

19    Q.    And immediately after that, two days later, there's on  
20    October 28th it says online transfer to Complete Advantage with  
21    a bank account ending in 2596 correct?

22    A.    Yes.

23    Q.    Since you are the only signature on the account, who made  
24    that transfer to Complete Advantage account?

25    A.    What Wells Fargo does is they have two accounts. They have

1 one where money normally is transferred into which earns  
2 interest and then they have a secondary account where you make  
3 transfers so that you can pay your bills.

4 Q. Okay. So this complete advantage account was also  
5 Mr. Delgado's account?

6 A. Under my name.

7 Q. And so in order to pay the bills, you had to transfer the  
8 money to another account to pay the bills?

9 A. Yes.

10 Q. Okay. And -- but that Complete Advantage account was also  
11 just Mr. Delgado's money?

12 A. Yes.

13 Q. Okay. And I'm going to show you Government Exhibit  
14 Number 2 and this is just a chart. I know you've probably not  
15 seen it before, but on October 26th of 2010, do you see your  
16 name, Linda Medlock, and your address and \$150,000?

17 A. Yes.

18 Q. In wire transferred out of this account?

19 A. Yes.

20 Q. Okay. Through the tenure of your employment for  
21 Mr. Delgado, did you receive into that account with your name at  
22 Wells Fargo many wire transfers from this Turks and Caicos  
23 account?

24 A. Yes.

25 Q. Did you ever receive money into the account that you opened

1 for Mr. Delgado from any other source?

2 A. Not that I can recall.

3 Q. Okay. And did you -- what did you use that money for?

4 A. To pay his bills.

5 Q. While we're looking at this chart, do you see December 15th

6 of 2010, a wire transfer to you? It appears like it's to you,

7 \$100,000?

8 A. Yes.

9 Q. February 1st, \$70,000 --

10 A. Yes.

11 Q. -- of 2011. February 23rd of 2011, \$150,000 to Linda

12 Medlock, correct?

13 A. Correct.

14 Q. April 7th of 2011, \$75,000 to Linda Medlock, correct?

15 A. Yes.

16 Q. 25th of May of 2011, an additional \$50,000 to Linda

17 Medlock?

18 A. Yes.

19 Q. 27th of June of 2011, \$50,000 to Linda Medlock?

20 A. Yes.

21 Q. July 8th of 2011, \$20,000 to Linda Medlock?

22 A. Yes.

23 Q. July 19th of 2011, another \$20,000?

24 A. Yes.

25 Q. July 28th of 2011, another \$20,000?

1 A. Yes.

2 Q. I think that's it.

3 And all of those would be transferred into the account  
4 that you opened at Wells Fargo on Redd here in El Paso?

5 A. Yes.

6 Q. Okay. Do you know that as a CPA -- I know it says Linda  
7 Medlock CPA on it -- did you have any interest in this account  
8 in Turks and Caicos?

9 A. No.

10 Q. Did you ask Mr. Delgado about the account?

11 A. Yes.

12 Q. Did you need to know about the source of money?

13 A. Yes.

14 Q. Why did you need to know?

15 A. Well when you have money just coming into an account, you  
16 need to explain example that to the IRS where it's coming from  
17 in case it's taxable.

18 Q. In case it's taxable. So if money is earned in a foreign  
19 country, is it taxable in the United States?

20 A. Yes.

21 Q. And you were going to do his personal tax return, correct?

22 A. Yes.

23 Q. Was that one of the reasons you needed to know about the  
24 source of this money?

25 A. Well, I -- I got a little curious to where all of this

1 money was coming from.

2 Q. Did you ask Mr. Delgado what the source of the money in the  
3 Turks and Caicos account was?

4 A. Yes.

5 Q. What did he tell you?

6 A. He said it was a line of credit.

7 Q. What's a line of credit?

8 A. A line of credit.

9 MS. FRANCO: Objection, Your Honor. Calls for expert  
10 testimony.

11 MS. KANOF: I don't think so. This is a fact witness  
12 and he's hired her as part of his scheme and artifice to  
13 defraud.

14 THE COURT: I'm going to overrule that objection. You  
15 can answer that.

16 BY MS. KANOF:

17 Q. What's a line of credit?

18 A. A line of credit is something you normally set up with a  
19 bank where you're allowed a certain amount in money, say 50,000  
20 or however much you need for a certain job or whatever, and then  
21 you, depending on what your credit is like, then it depends on  
22 how much this line of credit is.

23 Q. So do you have to pay interest? Is it like a loan?

24 A. Yes.

25 Q. Do you have to pay interest on a line of credit?

1 A. You do, but it's more flexible than a fixed loan. A fixed  
2 loan is where you have a set payment every month like a car  
3 payment. A line of credit you draw on it as you need it and you  
4 pay it back.

5 Q. So if it's a line of -- as a line of credit, how did you  
6 handle it for his tax return, income?

7 A. I didn't.

8 Q. Is a line of credit income?

9 A. No.

10 Q. If this money was money that he earned as an attorney for  
11 consulting fees for a client, would it have been income?

12 A. Yes.

13 Q. And would you have needed to know that?

14 A. Yes.

15 Q. Okay. When you would communicate with Mr. Delgado was it  
16 always in person?

17 A. No.

18 Q. And how was it -- the communication usually done?

19 A. A telephone and then later I came more sophisticated; text.

20 Q. How about e-mails?

21 A. Yeah, in person.

22 Q. What about e-mails?

23 A. E-mails? Sorry. Yes, e-mails.

24 Q. Did you have an assistant that worked for you that assisted  
25 you in your business?

1 A. Yes.

2 Q. And what was her name?

3 A. Rosie Saenz.

4 Q. Okay. And so as the time went on, did you develop any kind  
5 of a relationship with Mr. Delgado?

6 A. Yes.

7 Q. Explain to the jury about that?

8 A. I thought we had a very good relationship. He was almost  
9 like my third son. And my husband and myself had him at our  
10 house. We went to dinner with him. We liked him very much.

11 Q. In fact, some of the e-mails that I'm about to show you,  
12 does he call you his mother?

13 A. Yes.

14 Q. And do you sometimes refer to yourself as his mum, M-U-M?

15 A. Yes.

16 Q. Relating to your British heritage?

17 A. Yes.

18 Q. Did you trust him?

19 A. Yes.

20 Q. I'm going to show you what's been marked Government Exhibit  
21 Number 10. Whoops. Oh, I'm sorry.

22 Did you provide the government with e-mails that you  
23 had in your possession between -- were transmitted between you  
24 and Mr. Delgado?

25 A. Yes, I did.



1 Q. And do you recognize Government Exhibit Number 139 being  
2 the first of those e-mails? I was showing you the exhibit  
3 number just so you know what I'm talking about.

4 A. Yes.

5 Q. Okay.

6 MS. KANOF: We'd move admission of Government's  
7 Exhibit Number 139.

8 MS. FRANCO: No, objection Your Honor.

9 THE COURT: Government Exhibit 139 is admitted.

10 BY MS. ARREOLA:

11 Q. Okay. So Ms. Medlock, this first e-mail is dated what?  
12 What's the date on it?

13 A. May 20th, 2010.

14 Q. Were there sometimes difficulties in communicating with  
15 Mr. Delgado?

16 A. Yes.

17 Q. What did he communicate to you about what he really did for  
18 a living?

19 A. He said he was an energy attorney.

20 Q. Okay. Did he elaborate?

21 A. He did. To be honest, I didn't fully understand all of it,  
22 but I know it was something to do with the environment and oil.

23 Q. And so the -- the money you were using to pay his bills was  
24 a line of credit; is that correct?

25 A. Yes.

1 Q. Did you ever handle the money that he made as an energy or  
2 environmental attorney?

3 A. No.

4 Q. How could you do his taxes if you didn't see his income?

5 A. I saw some of the 1099s, but I never handled the money.

6 Q. With regard to the first e-mail, page number 1, on May 20th  
7 of 2010, did you send an e-mail to Mr. Delgado?

8 A. Yes.

9 Q. Okay. And what's this e-mail basically? You can read it  
10 real quick to yourself and we'll talk about it a bit.

11 A. Yes.

12 Q. Okay. So in addition to doing -- is this May 20th of 2010?

13 A. Yes.

14 Q. In addition to him requesting that you do his, I guess it  
15 would be 2009 taxes, is that what he wanted you to start with?  
16 What years taxes did he want you to work on?

17 A. It looks like I needed '5, '6, '7, '8 and '9.

18 Q. The years?

19 A. Yes.

20 Q. You were trying to collect information to do back taxes as  
21 well?

22 A. Yes.

23 Q. Okay. And what was your main concern in this e-mail?

24 A. That I thought he had some deductions for making payments  
25 to other people for fees or whatever and these would be a

1 deduction, but I needed documentation for it.

2 Q. In the last part of the part that I highlighted, you said,  
3 please call Wells Fargo and request these statements. I thought  
4 he wasn't on the account at Wells Fargo.

5 A. He -- I suppose -- I don't remember this, but he must have  
6 told me he had an account there.

7 Q. He had an account at Wells Fargo, also; is that correct?

8 A. But I didn't remember that.

9 Q. And then you also asked, are you in town?

10 A. Yes.

11 Q. Okay. Did he keep you abreast of where he was at least in  
12 the beginning of the relationship?

13 A. Well, he told me, you know, that he would be leaving. He'd  
14 be in Mexico, South America. He didn't keep me specifically on  
15 a week to week.

16 Q. If you would look at the next e-mail. And before I go on  
17 with that, this line of credit in the Turks and Caicos, you paid  
18 all of his personal bills; is that correct?

19 A. Yes.

20 Q. Out of that alleged line of credit money?

21 A. Yes.

22 Q. When you have a line of credit, do you have to pay it back?

23 A. Yes, depending on the arrangement you have.

24 Q. Did you ever make a payment --

25 A. No, I did not.

1 Q. -- on the line of credit in the Turks and Caicos?

2 A. No.

3 Q. Mr. Delgado answers you. Is this the e-mail that he  
4 generally used, the Delgado and Associates e-mail?

5 A. Yes.

6 Q. Do you -- did you ever pay a bill for him for an office in  
7 Calgary, Canada?

8 A. No.

9 Q. Did you ever pay a bill for him in an office in Mexico  
10 City?

11 A. No.

12 Q. He says that his business address is the same as yours,  
13 correct, 7362 Remcon?

14 A. Yes.

15 Q. Did he have an actual, physical office there?

16 A. No.

17 Q. What did he have there?

18 A. He had the accommodation of the mail and any telephone  
19 calls that came in.

20 Q. So there's a receptionist?

21 A. Yes. And if he needed a virtual office, he had that.

22 Q. Okay. So he didn't have a physical office there, correct?

23 A. No.

24 Q. And he tells you, I'm not, in response to your question if  
25 he was in town; is that correct?

1 A. Yes.

2 Q. And asking you -- and you're asking in here for a payment  
3 of some kind; is that correct? Can you send me a check?

4 A. Yes.

5 Q. Made out to the U.S. Treasury?

6 A. Yes.

7 Q. Okay. And he responds to you how?

8 A. He's not in town, can it wait till he comes back.

9 Q. And you respond?

10 A. Okay.

11 Q. Moving down to the next e-mail -- do you speak Spanish?

12 A. No.

13 Q. Okay. He forwarded this e-mail to you that was in Spanish.  
14 Did Rosie speak Spanish?

15 A. Yes.

16 Q. Did she help you with this?

17 A. Yes.

18 Q. Okay. And so he forwards an e-mail to you in Spanish, but  
19 actually it's really to Rosie who works there in your office; is  
20 that correct?

21 A. Correct.

22 Q. And he's asking you to pay a business expense?

23 A. Yes.

24 Q. Using the line of credit in Turks and Caicos?

25 A. Yes.

1 Q. And that business expense is for something called the  
2 University Club in Mexico; is that correct?

3 A. Yes.

4 Q. And just to verify that, the e-mail in Spanish is the IP  
5 address universityclub.com.mx, M-X?

6 A. Yes.

7 Q. Okay. So if this is -- he's asking you to pay a business  
8 expense for his business, but you're not going to be doing his  
9 business taxes, correct?

10 A. Correct.

11 Q. And he's asking you to pay a business expense out of a line  
12 of credit out of the Turks and Caicos account; is that correct?

13 A. Yes. And I don't even remember that, paying that.

14 Q. Was that attached to the e-mail, this picture?

15 A. Yes.

16 Q. It's an invoice, correct? I know you don't speak Spanish.  
17 Never mind. I withdraw that question.

18 On October 21st, this is actually the date you open  
19 the account, correct?

20 A. It was around that time.

21 Q. Okay. And does -- this is page seven of the e-mails that  
22 you provided to the government.

23 Does -- do you send an e-mail on the 7th to  
24 Mr. Delgado with regard to the bank account?

25 A. Yes.

1 Q. Okay. And the first thing you say to him is, hope your  
2 trip to Brazil was pleasant?

3 A. Yes.

4 Q. Why did you say that?

5 A. Because he told me he was in Brazil.

6 Q. Do you know whether or not he was in Brazil?

7 A. I have no idea.

8 Q. What do you tell him about having to go back to the bank?

9 A. I had to open another account, because his signature wasn't  
10 on the first one and it's required on a joint account.

11 Q. And that's what you were telling us before, that that's why  
12 there's two accounts, where it comes into your account and then  
13 you have to transfer it to another account?

14 A. That's different. We needed a totally new account with  
15 both signatures on it.

16 Q. Did you ever -- is that a third account now?

17 A. Yes, but it never happened.

18 Q. It didn't happen?

19 A. No.

20 Q. Why didn't it happen?

21 A. Because he never went, as far as I know, anyway.

22 Q. Okay. And do I send your child support directly to your  
23 wife?

24 So is this when you started to develop this personal  
25 relationship with him?

1 A. Yes.

2 Q. Did you meet his ex-wife?

3 A. Yes.

4 Q. What did you do for him with relationship to his divorce?

5 A. I was trying to negotiate some kind of settlement between  
6 him and his ex-wife.

7 Q. Page eight. Is that, that -- what is -- that's the next  
8 day, correct, October 22nd?

9 A. Yes.

10 Q. And again, are you trying to get some information? Let me  
11 start at the bottom.

12 After that first e-mail, the preceding day when you  
13 are trying to open that third account, does he respond to you?  
14 Because this is at 10:21 p.m. on the same day. And do you say,  
15 Marco, what's going on? Do you want me to help or not? Why are  
16 you asking him that?

17 A. Because I got very little cooperation.

18 Q. And how does he respond to you on the next morning?

19 A. He said he would initiate the transfer today. Can you  
20 leave checks with Rosie ready for when funds become available to  
21 take care of his child support.

22 Q. Oh, okay.

23 A. Among other things.

24 Q. Among other things? Okay. And (foreign language), that's  
25 not Spanish, is it or do you know?



1 A. Italian, is it?

2 Q. And how do you respond? His e-mail was at 5:47 in the  
3 morning and you obviously were awake, because at 6:11 a.m., are  
4 you again asking him or explaining to him what you're going to  
5 do to make his personal payments?

6 A. Yes. I wanted to set up bills online, so I could pay them  
7 wherever I was because we travel quite a bit, too.

8 Q. Who is we?

9 A. My husband and I.

10 Q. And by the way, you didn't misspell the word "check," did  
11 you?

12 A. That's the way we write it.

13 Q. "We" meaning the British?

14 A. Yes.

15 Q. And what do you mean by the account will not activate until  
16 funded?

17 A. I can't set up bills online until money is in there.

18 Q. So on October 21st, you're waiting at Wells Fargo for him  
19 to show up to be on the account, correct?

20 A. Yes.

21 MS. FRANCO: Objection. There was testimony that the  
22 account was opened on the 26th of October, not the 25th.

23 A. I must have.

24 MS. KANOF: No, Your Honor. She went there on the  
25 21st.

1 THE COURT: Let's ask the witness.

2 BY MS. KANOF:

3 Q. Okay. Did you go to the bank and he did not show up?

4 A. Yes.

5 Q. And his reason was what? I mean, that the bank account had  
6 to be opened right away?

7 A. He wanted the bank account opened so that he could get  
8 funding for travelling.

9 Q. Was there going to be a transfer?

10 A. Yes.

11 Q. Okay. And on the 22nd of October, did you say the account  
12 will not activate until funded?

13 A. Yes.

14 Q. Had you already tried to open an account, but it will not  
15 open until funded?

16 A. I can't remember.

17 Q. Page number ten of your e-mails. On January or, actually,  
18 I think January 2011 -- on January 2011, is -- do you write him?  
19 And does it show how your relationship had progressed?

20 A. Yes.

21 Q. And when you called yourself -- and again, "favorite"  
22 spelled a little bit different than we would spell in the United  
23 States?

24 MS. FRANCO: Sidebar. Objection.

25 THE COURT: Sustained.

1 BY MS. KANOF:

2 Q. Is that a proper way of spelling favorite to you?

3 A. Yes.

4 Q. What was the purpose of this e-mail?

5 A. To remind him to initiate the transfer.

6 Q. Okay. And why did you need a transfer on that day?

7 A. To pay his bills.

8 Q. And how does he respond?

9 A. Let me know if you got it.

10 Q. And that was -- and then how did you respond?

11 A. Have not received yet.

12 Q. Is this a common interchange between you and Mr. Delgado?

13 A. Yes.

14 Q. Okay. Explain that, please.

15 A. Well, if people were sending bills to my office, and if  
16 they needed to be paid, I had to ask him to transfer funds so I  
17 could pay the bills.

18 Q. And did he always promptly respond to transfer?

19 A. Not always, no.

20 Q. And is this an example that sometimes on occasion when he  
21 said he would transfer funds were they always transferred?

22 A. Usually, eventually, yes.

23 Q. What do you mean by eventually?

24 A. Sometimes it would take time if he was out of the country.

25 Q. Did you know he was out of the country?

1 A. No, I just assumed.

2 Q. For example, previously, the previous e-mail was  
3 January 28th, and that was on page ten, and did Mr. Delgado say  
4 let me know if you got it? Thanks?

5 A. Yes.

6 Q. And now on Page 11, it's February, 1st and what are you  
7 telling him?

8 A. Still no transfer.

9 Q. Okay. And how does he respond?

10 A. I just called. I'm assuming he called the bank. They will  
11 get his tracking number.

12 Q. And while you're waiting for this money, is there anything  
13 that's occurring with regard to the bills?

14 A. Anything that's occurring?

15 Q. What kind of bills are you paying?

16 A. He was having a lot of work done on his house that utility  
17 bills, various bills.

18 Q. For example?

19 A. School bills for his son.

20 Q. Page 12 of this exhibit, on February 3rd, two days later,  
21 he says, need your help with a check for Ethan wells -- West for  
22 \$5,000, correct?

23 A. Yes.

24 Q. Who is Ethan West?

25 A. He was a tailor in Ft. Worth.

1 Q. On page number 13 you do note that -- you're trying to pay  
2 bills for that individual. Why were you urgently trying to get  
3 money to pay for that individual?

4 A. Because he was urgently in need of it.

5 Q. Okay. Did -- what was the relationship between you and  
6 Mr. Delgado's contractors that were doing work for him?

7 A. Well, because he was not in the country or not in the city  
8 or wherever he was, we paid all of his contractor bills. They  
9 came to the office. They came to my house.

10 Q. What do you mean they came to the office and your house?

11 A. They brought the bills to my office, and if I wasn't there  
12 they would come to my house.

13 Q. Why are they coming to your house and office?

14 A. Because they need to get paid.

15 Q. Well, weren't you paying them timely?

16 A. I didn't pay unless I got the invoice.

17 Q. And where would you get the invoice from?

18 A. From the contractor. And then I had to make sure it was  
19 okay with Mr. Delgado.

20 Q. Well, when they were coming to your house, when they were  
21 coming to the office, did you already have the invoice?

22 A. No.

23 Q. And did you tell them, well, I need the invoice?

24 A. Yes.

25 Q. And once you had the invoice were you able to pay them?

1 A. Well, I had to check with Mr. Delgado.

2 Q. And did that cause delays?

3 A. Yes.

4 Q. Why?

5 A. Well, if I couldn't get hold of him. And then if I  
6 remember correctly, he told me to pay certain ones without, you  
7 know, any permission, so I did, like child support, Columbia  
8 University for his son, for example.

9 Q. Okay. Government Exhibit -- okay.

10 Page 16 -- all of these are in evidence so I'm not  
11 going to go through every single one of them, but on page 16,  
12 did you send Mr. Delgado on February 4th an e-mail regarding his  
13 taxes?

14 A. Yes.

15 Q. Okay. And were you specifically asking him a list of  
16 questions so that you could work on his taxes?

17 A. Yes.

18 Q. And did he respond on February 7th, hola, Linda. Response  
19 in body of text in caps. Long live the queen.

20 A. Yes.

21 Q. Okay. So the e-mail that is at the bottom of page 16, the  
22 portions that are in caps after your questions, are those  
23 Mr. Delgado's responses to your questions?

24 A. Yes.

25 Q. Okay. So you ask him about some personal expenses about

1 his wife and his kids, I understand.

2 Down a little bit below or right about the middle,  
3 you -- I'm going to highlight this and ask to you read it.

4 A. I checked the 1099s, the large ones with the 2009, so I  
5 still need F.G.G. and the Electric Company for 2010.

6 Q. Okay. And he said what?

7 A. Just left invoice mail.

8 Q. Okay. So did he represent to you that he had done work for  
9 the Electric Company in 2010?

10 A. Yes.

11 Q. Did you ever get 1099s from the Electric Company in 2010?

12 A. I can't remember. I know I got some, but I can't remember  
13 specifically which year.

14 Q. And you were doing taxes all the way back to 2004, correct?

15 A. Yes.

16 Q. And who's F.G.G.?

17 A. I didn't know.

18 Q. Did you ask him who F.G.G. was?

19 A. No, because it was just a 1099. It was income. If it was  
20 an expense, I probably would have asked more specifically.

21 Q. Okay. And the next line, the invoices for Ener Proyectos,  
22 what specifically were they for, consulting or engineering? And  
23 how does he respond?

24 A. Consulting and engineering.

25 Q. What -- why were you asking him this question?

1 A. So can come categorize it.

2 Q. As what?

3 A. Consulting or engineering.

4 Q. You are doing his personal taxes, correct?

5 A. Yes.

6 Q. Okay. And why do you need to know information about  
7 invoices from Ener Proyectos?

8 A. Because he had a Schedule C and that's under his personal.

9 Q. Okay. Explain that.

10 A. A Schedule C is a -- it's a business you have when you are  
11 a sole proprietor.

12 MS. FRANCO: Objection, Your Honor. Calls for expert  
13 opinion.

14 MS. KANOF: No, he's asking her to do this.

15 MS. FRANCO: She's already testified she's a CPA.

16 THE COURT: I'm going to sustain the objection.

17 BY MS. KANOF:

18 Q. You were doing his personal taxes, correct?

19 A. Yes.

20 Q. And I'm not -- and I wouldn't ask you why, but did you need  
21 this information?

22 A. Yes.

23 Q. For personal taxes?

24 A. I did.

25 Q. And did you need this information to determine whether or



1 not he had a business deduction?

2 A. Yes.

3 Q. Who's Rick?

4 A. I believe that's Rick Lara. He's a friend --

5 Q. And --

6 A. -- of Marco's. I happened to know him as well.

7 Q. Okay. And to your question, I'm working on the child  
8 support issue, what does he respond?

9 A. Let's get it behind us.

10 Q. Why would you be responsible for getting his child support  
11 issue behind you?

12 A. Because I was trying to work out with Sharon.

13 Q. Who is Sharon?

14 A. Marco's ex-wife.

15 Q. Did you know her before Mr. Delgado?

16 A. No.

17 Q. Page number 17, the 8th of February. Starting at the  
18 bottom on the 8th of February, he writes to you this  
19 information. Could you plead read it out loud?

20 A. Dear Linda, just wanted to remind you Liliana needs you to  
21 advance her \$3,000 for her landscaper.

22 Q. Who is Liliana?

23 A. A friend of Marco.

24 Q. Just a friend?

25 A. Well, girlfriend.

1 Q. And when you said you had developed a personal  
2 relationship, did you also spend personal time with him and his  
3 girlfriend?

4 A. Yes.

5 Q. What does this sentence that I'm now highlighting mean?

6 A. If you're going to take this out of my allowance, please do  
7 it in at least two installments, thanks.

8 Q. What allowance what are you talking about?

9 A. I'm trying to remember. I think it was a little bit of a  
10 joke where he, you know, wanted me to set up an allowance for  
11 him. I think it was tongue and cheek.

12 Q. Okay. When we're talking about payments that you were  
13 making out of the money that was transmitted from the Turks and  
14 Caicos account, did you also pay your own fees out of that  
15 account?

16 A. Yes.

17 Q. And he permitted you to do that, right?

18 A. Yes.

19 Q. He didn't pay you from a separate account?

20 A. No.

21 Q. Page number 18. Who is Saul at Cost Plus Pools?

22 A. He was a gentleman who was doing the pool in his personal  
23 residence.

24 Q. Okay. And it appears here that he did give you an invoice.

25 A. Yes.

1 Q. And were you able to pay that invoice?

2 A. Yes.

3 Q. Okay. Immediately?

4 A. No. Let me see. Yeah, Mr. Delgado wanted the deck  
5 finished before the invoice was paid.

6 Q. Okay. And so you communicated that on his behalf?

7 A. Yes.

8 Q. Who is Gustavo Cordova?

9 A. I do not know.

10 Q. Do you know anything about El Conquistador Polo Club?

11 A. I just heard of it.

12 Q. Did you pay those bills as well?

13 A. Yes.

14 Q. Okay. So the e-mail in the middle of page 19 from  
15 Mr. Delgado is him authorizing you to pay his polo club dues as  
16 well as the horse boarding?

17 A. Yes.

18 Q. And you respond that you've done that.

19 And then with regard to this man -- did you get to  
20 know this name Saul pretty well or Saul?

21 A. Once I knew him, I wouldn't say, well, I knew him to come  
22 to my office and house.

23 Q. You said he gave you invoices, right?

24 A. Yeah. He has given me invoices.

25 Q. Okay. And in this -- on February 16th, do you say Saul

1 wants another 2,200 for the pool. Is that okay? What kind of  
2 pool are you building? And do you also say, you had to pay  
3 3,000 last week for the decorator, and you ask him if he wants  
4 to sign his 2005 return; is that correct?

5 A. Yes.

6 Q. Page 21. On February 18th, again, you're basically trying  
7 to get the information that you need to do his tax returns; is  
8 that correct?

9 A. Correct.

10 Q. Page 23. Do you know who -- so we've been talking about  
11 the intelligent office, so you paid his bills for the  
12 intelligent office, and on page 23, is that an example of the  
13 statements for payment for having that intelligent office?

14 A. The statement isn't here, but...

15 Q. But it's an example of?

16 A. Yes, from Veronica, yes.

17 Q. Being built for Mr. Delgado's intelligent office?

18 A. Yes.

19 Q. That's not for your actual office, correct?

20 A. No.

21 Q. Page 24, you're again asking him about helping with him  
22 giving him legal -- financial advice about his future, correct?

23 A. Yes.

24 Q. And let me go forward. Did you also communicate with his  
25 children for him?

1 A. Yes, with Emiliano, in particular.

2 Q. Okay. And also provide from the Turks and Caicos account  
3 payments for them?

4 A. Yes.

5 Q. Did -- did you ever receive any transmissions or any other  
6 money to pay for child support or anything for his family from  
7 any other account other than the Turks and Caicos?

8 A. No.

9 Q. Okay. Let's see. Most of these are personal bills.

10 THE COURT: Is this a good time for a lunch break?

11 MS. KANOF: Yeah, it is.

12 THE COURT: Ladies and gentlemen of the jury, if you  
13 would be back in the jury room at 2:20, we'll resume our  
14 proceedings at 2:20.

15 COURTROOM SECURITY OFFICER HEIDTMAN: All rise.

16 (Lunch break at 1:16 p.m. to 2:23 p.m.)

17 (Open court. Defendant and counsel present.)

18 (Jury present.)

19 THE COURT: Let the record reflect that all members of  
20 the jury are present, the United States through its assistant  
21 United State's attorneys are present, the defendant and his  
22 attorney is present.

23 Ms. Medlock is on the witness stand.

24 Ms. Kanof?

25 MS. KANOF: May I proceed, Your Honor.

1 THE COURT: Yes, ma'am.

2 BY MS. KANOF:

3 Q. Let's see. We'd gone to page 31. Let me go back to page  
4 30 for just a second and draw your attention to the top e-mail  
5 from Mr. Delgado to you on March 21st of 2011 and, Hi Linda.

6 I'm -- does it say, Hi Linda, I'm dead tired, but had a blast.

7 Wire instructions have been issued. Do you recall that?

8 A. Yes.

9 Q. And what wire instructions is he referring to?

10 A. The one --

11 Q. If you know?

12 A. Well, I may not specifically, the one that we were talking  
13 about prior.

14 Q. So had you -- do you recall if he made a request to wire  
15 for money from the Turks and Caicos?

16 A. Yes.

17 Q. Okay. On the 31st at -- I mean on the 23rd of March, then  
18 though had you recognized that no wire has in fact come through  
19 yet.

20 A. Yes.

21 Q. Okay. With regard to page 32 of your e-mails, you had been  
22 asking him for 1099s in order to complete his tax returns?

23 A. Yes.

24 Q. Starting at the bottom, an e-mail that he forwarded to you  
25 March 28th, he received an e-mail from somebody named Fernando

1 Gireud, G-I-R-E-U-D. It's on your screen in front of you.

2 A. I don't know who that is.

3 Q. And that was going to be my questions. You never met  
4 anybody by that name?

5 A. No.

6 Q. And then did he forward it to you on that same day with a  
7 message?

8 A. (Reading silently.)

9 Q. I highlighted it to give you some assistance.

10 Did he say anything to you before when he forwarded  
11 it?

12 A. (No response.)

13 Q. Hi Linda?

14 A. Yes.

15 Q. In your response to him on that same day, I'm going to go  
16 ahead and let you read to the jury what your response was?

17 A. I hate to knock you, but funds are low and child support  
18 and tuition and student loan payments are due very soon. How  
19 are you?

20 Q. Page number 33. Did you request expenses to do his tax  
21 returns for certain years?

22 A. Yes.

23 Q. And did he have somebody named Amy Padilla send them to  
24 you?

25 A. No, I did.

1 Q. Oh, you did?

2 A. I did.

3 Q. Who's Amy Padilla?

4 A. She's a daughter of a friend of mine. I had to do some  
5 spread sheets.

6 Q. Did you give her information to put on the spreadsheets?

7 A. Yes, receipts.

8 Q. Who provided the information to you that she put on the  
9 spreadsheets?

10 A. Mr. Delgado.

11 Q. Page 34. Did you pay Mr. Delgado's utility bills?

12 A. Yes.

13 Q. And on April 2nd of 2011, did Mr. Delgado send you an  
14 A.T.& T. Bill to be paid?

15 A. Yes.

16 Q. Okay. And it was for \$982?

17 A. Yes.

18 Q. Page number 36. Were you also required as part of your  
19 agreement with Mr. Delgado to pay such expenses as his son's  
20 fraternity dues, personal visit, spring break and other expenses  
21 and vacations?

22 A. Yes.

23 Q. And did sometime come where you were just communicating  
24 directly with his son?

25 A. Yes. Not very often, but yes.



1 Q. And all of that money came out of the Turks and Caicos  
2 account?

3 A. Yes.

4 Q. Did you pay his bills for meals and things for the Coronado  
5 Country Club?

6 A. Yes.

7 Q. And on page number 38, did somebody by the name of Irene at  
8 the Coronado Country Club send you a monthly invoice to make a  
9 payment for him?

10 A. Yes.

11 Q. And page number 39, is that the invoice?

12 A. Yes.

13 Q. For the month of March of 2011?

14 A. Yes.

15 Q. And did you make that \$1,786.02 payment out of the monies  
16 that you received from the Turks and Caicos account?

17 A. Yes.

18 Q. Page number 40, April 5th of 2011, did you send an e-mail  
19 to Mr. Delgado?

20 A. Yes.

21 Q. And what did you say?

22 A. No transfer yet.

23 Q. And what transfer are you referring to?

24 A. When -- the last one that I requested. I can't remember  
25 the amount. I didn't usually ask for any amount.

1 Q. Just for a transfer?

2 A. Yes.

3 Q. So did you ever get a transfer without having to ask?

4 A. No, not that I remember.

5 Q. So you had -- and how long did you wait to ask until --  
6 under what circumstances did you ask?

7 A. Well, I knew that the child support was extremely important  
8 and also the tuition, so when I saw the deadline approaching,  
9 then I would ask.

10 Q. Okay. On page 41, in -- are there invoices for Franklin  
11 Pool Service?

12 A. Yes.

13 Q. And did you pay that invoice as well?

14 A. Yes.

15 Q. Page 42, there's starting at the bottom, did Mr. Delgado  
16 send an e-mail to you about his daughter's summer program?

17 A. Yes.

18 Q. Did his daughter go to a finishing camp in Switzerland?

19 A. Yes. Switzerland or France.

20 Q. But it's in France?

21 A. Yes, it is.

22 Q. And again, another invoice from Cost Plus Pools?

23 A. Yes.

24 Q. Did you pay that invoice?

25 A. Yes, presumably, I did.

1 Q. And was the balance \$15,500?

2 A. Yes.

3 Q. Page 46. What are you referring to -- on April 12th, 2011,  
4 what strategy is he referring to?

5 A. About the negotiating with his ex-wife.

6 Q. Why are you involved with the negotiations of his ex-wife?

7 A. I don't know, but...

8 Q. And this is an example of your relationship at the bottom?

9 A. Yes.

10 Q. And on page number 47, just in the e-mail of -- now on page  
11 number 48, if you recall, dated April 20th of 2011, what did you  
12 observe if anything that was unusual?

13 A. I don't remember all of the specifics, but it seemed like  
14 there was an incorrect birthday on the passport.

15 Q. And whose?

16 A. His son.

17 Q. And why were you looking at his son's passport?

18 A. You know, I can't remember.

19 Q. You paid veterinary bills and grocery bills and things like  
20 that?

21 A. Yeah. They were from Sharon Delgado.

22 Q. I'm looking for -- page number 56. Okay.

23 Did you get an e-mail from an individual by the name  
24 of -- I have the wrong page numbers on my notes. I'm sorry.

25 Did you get an e-mail on May 3rd of 2011, by an

1 individual named Joan?

2 A. Yes.

3 Q. Have you ever met Joan?

4 A. No.

5 Q. Okay. And when you received this -- Joan Duncan, I guess  
6 is her name -- when you received this e-mail, do you know what  
7 it was regarding?

8 A. No, I didn't.

9 Q. But she seemed to know your name, correct?

10 A. Yes.

11 Q. And if you could please read this e-mail to the jury?

12 A. I'm an interior designer in Taos, New Mexico and I'm  
13 working with Mr. Delgado on his newly purchased condo up in  
14 Canada. I sent Marco a text asking him about his past due  
15 invoice and received a reply on April 29th saying that he would  
16 talk to you about taking care of it. I have still not received  
17 payment and very much appreciate it if you could take care of  
18 this today.

19 Q. Did you know anything about a condo?

20 A. No, I didn't, but I did ask him and he told me he had  
21 purchased one.

22 Q. And prior to receiving this e-mail, you had -- he didn't  
23 tell you that he had bought a condominium?

24 A. No.

25 Q. And did he warn you that he was going to give your e-mail

1 address and ask you to make payments for his -- something  
2 regarding his condominium?

3 A. No, I didn't. I don't remember him asking me prior.

4 Q. And the -- on page 59, on May 13th from you to Mr. Delgado,  
5 did this woman then also call you or somebody else call you?

6 A. Presumably, it was her, yes.

7 Q. Did the manager of the Condo Heart condos, a woman by the  
8 name of Elizabeth, also -- did he send you or forward an e-mail  
9 to you to pay the expenses that were required like the H.O.A.  
10 fees for the condominium?

11 A. Yes.

12 Q. Okay. And again, did he warn you that you were going to be  
13 paying those?

14 A. I don't remember.

15 Q. On May 14th of 2011, again did you have to remind him --  
16 well, I'll go ahead and ask you to please read this e-mail to  
17 the jury.

18 A. We are starting to get low on funds. This has been an  
19 expensive month. The tailor Swiss school, Russian school, et  
20 cetera. Also I have two tickets for you to Vegas Night Out at  
21 the museum for the opera. Can you make it?

22 Q. And did you make all of those payments for all of those  
23 events out of the money that was transferred to the account that  
24 was only in your name that received money only from the Turks  
25 and Caicos account?

1 A. Yes.

2 Q. That was page 61. Page 62, yet another e-mail from Joan  
3 Duncan. Is that to you, is that correct?

4 A. Yes. Yes.

5 Q. And when Ms. Duncan writes to you, is it May 18th of 2011?

6 A. Yes.

7 Q. And does she tell you hopefully you've heard from Marco and  
8 we can put it to rest?

9 A. Yes.

10 Q. Did you know what she was doing for him?

11 A. No.

12 Q. But what does it say?

13 A. I'm assuming interior design.

14 Q. When -- sometimes did you have to deal directly with the  
15 former Mrs. Delgado?

16 A. Yes.

17 Q. And on May 20th, did you have to apologize to her?

18 A. Yes.

19 Q. Please read that to the grand [sic] jury?

20 A. I am sorry that I have not sent a check to you, but  
21 unfortunately low on budget. The children have cost a small  
22 fortune month, tuition in Switzerland and Russia. I am hoping I  
23 can accommodate at the end of the month. Any thoughts on my  
24 proposal?

25 Q. What kind of proposal?

1 A. We were trying to get a settlement between the two of them.

2 Q. You called it your proposal, not Mr. Delgado's proposal.  
3 Did you develop the proposal?

4 A. Yes, I did it.

5 Q. Number 64. Did you receive an e-mail or did you send an  
6 e-mail to Mr. Delgado on -- I didn't mean number 64 -- but page  
7 63 on May 27th of 2011, and address it to my wayward son?

8 A. Yes.

9 Q. Now, in the first -- the first line, what did you say to  
10 him?

11 A. I have paid \$1,200 on your phone bill on my credit card, so  
12 there will be no interruptions of service.

13 Q. Is that in response to an e-mail that he sent you earlier  
14 in which he said what?

15 A. Don't let A.T. & T. cut me off. Thanks.

16 Q. And so why did you charge \$1,200 on your personal credit  
17 card for his A.T. & T. BILL?

18 A. So it wouldn't be cut off.

19 Q. How often did you use your personal credit card to bail  
20 Mr. Delgado out?

21 A. Quite a lot.

22 Q. Well, what do you mean by quite a lot?

23 A. Well, in the beginning, not at all, and then towards the  
24 end, a lot, last three months, maybe.

25 Q. You got paid back?

1 A. Yes.

2 Q. On May 27th, page 65, did you send Mr. Delgado an e-mail  
3 with regard to the problems he was having settling his divorce?

4 A. Yes.

5 Q. And what did you say?

6 A. It's embarrassing.

7 Q. Well, just the first line.

8 A. Marco, have a brain. Sharon went to your house and has  
9 seen what you have done. That's why she doesn't settle. I  
10 would like to see this Taj Mahal.

11 Q. Were you just trying to help him?

12 A. Yes.

13 Q. Is this the A.T. & T. bill, the one that's attached, that  
14 you put on your credit card, if you can recall?

15 A. I can't see if it was 1,200 there, but presumedly, yes.

16 Q. Oh, with regard to this page 66, this June 9th, 2011  
17 e-mail, does he say, Hi ya, mom. My flight lands at 7:30?

18 A. Yes.

19 Q. Okay. Was he often in a hurry?

20 A. Always.

21 Q. Explain that, please.

22 A. Everything had to be done immediately. He was always in a  
23 hurry, that's why things had to be -- you know, that's why I  
24 used my credit card.

25 Q. Okay. On page 68, on June 18th of 2011, again, do you



1 remember her -- remind him that you need another transfer ASAP?

2 A. Yes.

3 Q. Because you need to pay things for him, correct?

4 A. Yes.

5 Q. Okay. And on Saturday, June 18th, what does he tell you?

6 A. He needs \$2,000 for his travel.

7 Q. Explain how that worked? Did Mr. Delgado have an ATM card?

8 A. I still don't know.

9 Q. Well, how often did he ask you for cash?

10 A. A lot. I can't give you an exact amount.

11 Q. How did that work?

12 A. He had another account and when he needed money he asked me  
13 to transfer into that account for his travelling.

14 Q. Okay. And that was separate from the two accounts you  
15 opened at Wells Fargo?

16 A. Yes.

17 Q. So you had that account money; is that correct?

18 A. Yes.

19 Q. And are there several e-mails in this package where he's  
20 asking for \$1,000, \$1,000, \$2,000?

21 A. You can only transfer \$1,000 a day.

22 Q. Is that why it's the limited amount?

23 A. Yes.

24 Q. And occasionally his children are the same?

25 A. Yes.

1 Q. And how would you transfer it? What would you do?

2 A. I do it online.

3 Q. Page number 70. Let's go to 75.

4 Oh, just quickly, on page number 72, Mr. Delgado  
5 forwards to you a bill asking you to cut a check in the amount  
6 identified, which was 149 euros. What did you do in order to  
7 transmit or pay in euros?

8 A. I'm trying to remember. I did it by wire.

9 Q. Page number 75. Who is Hensal Glass? What was \$4,173 to  
10 Hensal Glass for?

11 A. For his house.

12 Q. Is there another A.T. & T. bill also on page 75?

13 A. Yes.

14 Q. And is this bill for \$4,127, continuing to page 76?

15 A. Yes.

16 Q. Is this just a phone bill or also for U-verse or internet?  
17 Do you know?

18 A. I'm not sure.

19 Q. Okay. Page 77 -- skip -- 79. You -- the subject of the  
20 e-mail on July 11th of page 79 appears to be flight. What were  
21 you talking to Mr. Delgado about in this particular e-mail  
22 exchange?

23 A. His son was changing his -- he was in Russia and he was  
24 changing his flight and wanted to stop off in New York and so  
25 wanted a roundtrip from New York to El Paso.

1 Q. But -- does that have to do with make -- you and he making  
2 decision expenses of his ex-wife?

3 A. Because the children are involved.

4 Q. And you wanted to help him with that?

5 A. Yes.

6 Q. Okay. Page 80. Subject: Hotel payment, Florence. Is  
7 that Florence, Italy?

8 A. Yes.

9 Q. July 11th of 2011, did you receive an e-mail from him  
10 asking you to pay for his stay in Italy?

11 A. Yes.

12 Q. Okay. And does this -- what information does this e-mail  
13 request?

14 A. My credit card number.

15 Q. Also, what else?

16 A. Confirmation of payment is approved and cashed.

17 Q. And what else does he ask for? Cash?

18 A. Yes.

19 Q. Okay. Preceding that on page 81, on that same day or based  
20 on his request, did you send this e-mail?

21 A. I did.

22 Q. And who did you send it to?

23 A. It's Mrs. Enzer.

24 Q. Go ahead and read it.

25 A. Dear Ms. Enzer, I would like to set up the account for

1 Marco Delgado in apartments 435 and 330. The credit card is  
2 under Linda Medlock, Mastercard, so and so, expiration, so and  
3 so. Thank you, Linda.

4 Q. Did he tell you what the purpose of this trip is?

5 A. He actually told me that he was taking the Foster's in-laws  
6 to Europe.

7 Q. Paul foster's in-laws?

8 A. Ys.

9 Q. Did he tell you it was a business trip?

10 A. Yes.

11 Q. And did he tell you anyone else went?

12 A. No.

13 Q. Okay. No, he didn't tell you or --

14 A. He did not tell me that anyone else went. He just said the  
15 Foster's in-laws.

16 Q. Did he indicate if Liliana went or not?

17 A. He did not.

18 Q. And on the 11th, after your payment, did he say that's why  
19 we love you?

20 A. Yes.

21 Q. But the amount of money was 1,662 euros for the hotel in  
22 Florence; is that correct?

23 A. Yes.

24 Q. For the two apartments for him and the Fosters?

25 A. Yes.

1 Q. Okay. On the 13th, two days later, does Mr. Delgado ask  
2 you for more money?

3 A. Yes.

4 Q. And what does he say about the cash or is that from you?  
5 That's from you actually.

6 You give him another \$1,000; is that correct?

7 A. Yes.

8 Q. But you, even though he's on a business trip in Europe,  
9 you're still trying to communicate to him about money?

10 A. Yes.

11 Q. On page 84, another bill from the tailor; is that correct?  
12 Am I going too fast for you?

13 A. Yes.

14 Q. Sorry.

15 On page 85 -- now this is the other one. I think it  
16 was July 11th. This is ten days later. You ask him if he's  
17 still in Italy?

18 A. Yes.

19 Q. So when you send him the \$1,000 or the \$2,000, do you have  
20 to know where he is in order to send him the money?

21 A. No, I don't.

22 Q. Okay. And in this case, did he ask you for funds needed?

23 A. Yes.

24 Q. And did he say, Hi Mom, hope all is well? He recognizes  
25 that he received some money, but he really needed money in his

1 ATM card.

2 A. Correct.

3 Q. And he's down to the last \$300; is that correct?

4 A. Yes.

5 Q. And by the way, did you get reimbursed off your credit card  
6 for the Italy trip?

7 A. Yes.

8 Q. Okay. Another, just reminder, I need ATM cash. You are  
9 the best. Let me know if there's a good time to talk today to  
10 update you on your final itinerary on page 86?

11 A. Yes.

12 Q. Did you handle his flight arrangements?

13 A. No.

14 Q. Do you know how his pilot arrangements were handled?

15 A. I don't know.

16 Q. So -- would there be a way that you would know where he was  
17 at a given time?

18 A. If I did the flight arrangements, yes.

19 Q. Okay. Except that on page 88 --

20 A. Except for the children, I have done that.

21 Q. Okay. In the middle of page 88, there's an e-mail from  
22 Mr. Delgado also talking about a Wells Fargo transfer to another  
23 customer and asking about flight arrangements. What was that?

24 A. Yeah, he asked me how he should arrange the flight  
25 arrangements; do you want me to do it and use your card? So I

1 said yes.

2 Q. Was this the first time that he asked you to assist with  
3 airline arrangements?

4 A. Yes.

5 Q. And did you use your credit card to make airline  
6 arrangements?

7 A. I didn't do it. I just gave him permission to use my card.

8 Q. To use your card?

9 And on page 90 he needs another \$2,000, correct?

10 A. Yes.

11 Q. Reminder, \$2,000 more?

12 On page 91 -- I'm trying to find the final -- oh,  
13 there it is. Page 92, subject: Budget from you to Mr. Delgado.  
14 How much did that trip cost?

15 A. This was the amount that was on my credit card.

16 Q. \$34,000?

17 A. Yes.

18 Q. And what other amounts are you talking about?

19 A. He and Marco and I discussed his son Emiliano and that we  
20 were trying to set up a budget for him so that he could, you  
21 know, learn a little physical control.

22 Q. Okay. But the amount that he put on your credit card while  
23 he was in Europe was \$34,000?

24 A. Yes.

25 Q. How did he pay you?

1 A. I paid myself.

2 Q. Out of Turks and Caicos money?

3 A. Yes.

4 Q. Well, let me ask one other question.

5 Did there come a time when you were concerned about  
6 the fact that this money was coming from the Turks and Caicos  
7 and your name was the only one on the account?

8 A. Yes.

9 Q. Did you go see a lawyer about it?

10 A. I did.

11 MS. KANOF: Pass the witness.

12 THE COURT: Ms. Franco?

13 LINDA MEDLOCK,

14 CROSS-EXAMINATION BY THE DEFENDANT

15 BY MS. FRANCO:

16 Q. Good afternoon.

17 Now, at this time, did you have a going rate for what  
18 you would charge for your accounting services?

19 A. Yes.

20 Q. And what was that, ma'am?

21 A. 200.

22 Q. 200 an hour?

23 A. Yes.

24 Q. And is that the amount of money that you charged  
25 Mr. Delgado?



1 A. Yes.

2 Q. And it sounds like you worked on putting together his tax  
3 returns, correct?

4 A. Yes.

5 Q. And paying his expenses for the last, looks like about  
6 seven months or so; is that correct?

7 A. Yes.

8 Q. And did you have any idea how much money it was that you  
9 paid yourself out of that account.

10 A. I don't know.

11 Q. Do you remember?

12 A. I can't remember.

13 Q. Do you remember meeting with the agents in this case and  
14 perhaps Ms. Kanof?

15 A. Yes.

16 Q. And do you recall telling them that you had taken about  
17 \$60,000 in fees from that account?

18 A. I don't remember, but that sounds about right.

19 Q. So if my math is right, that's about 300 hours worth of  
20 work that you believe you did for Mr. Delgado?

21 A. Yes.

22 Q. So when Ms. Kanof was asking well why did you do this and  
23 that you were getting paid for it, correct?

24 A. Oh, yes.

25 Q. The bank account -- I'm -- just to clear that up. It

1 appears that the bank account that we're talking about was the  
2 one that was opened towards the end of -- I think it was  
3 October; is that right?

4 A. Yes.

5 Q. But the e-mails start earlier than that, about a week  
6 before?

7 A. Yes.

8 Q. So that week before is that when he asked you to meet me at  
9 the bank so I can pay my bills?

10 A. Yes.

11 Q. And that's when he was unable to meet you at the bank,  
12 correct?

13 A. Yes.

14 Q. And at that point in time, you opened up an account in your  
15 own name?

16 A. Yes, as per the banker's suggestion.

17 Q. So his banker suggested to you to open it up in your name.

18 A. Yes.

19 Q. And as time went on, you indicated that you believed that  
20 the money that was being transferred was from a line of credit?

21 A. Correct.

22 Q. And that was based upon you said that's what Mr. Delgado  
23 told you?

24 A. Yes.

25 Q. But in all of these e-mails you'll agree with me that they

1 just spent sometime going over, there's no conversation in there  
2 about a line of credit, correct?

3 A. Correct.

4 Q. And there's nothing in there about him -- you being  
5 concerned about him paying down a line of credit, correct?

6 A. Correct.

7 Q. At the -- I know at first you didn't recall, but then after  
8 having looking at the e-mails you recalled that Mr. Delgado did  
9 have another account or at least one other account at the Wells  
10 Fargo bank, correct?

11 A. Yes.

12 Q. And that would have been an account in his own name?

13 A. Yes.

14 MS. FRANCO: May I have just a moment, Your Honor?

15 THE COURT: Yes, ma'am.

16 MS. FRANCO: Pass the witness.

17 MS. KANOF: No further questions, Your Honor.

18 THE COURT: May Ms. Medlock be permanently excused?

19 MS. KANOF: Yes, please, Your Honor.

20 MS. FRANCO: Yes, Your Honor.

21 THE COURT: Ms. Medlock, you are excused and free to  
22 go.

23 THE WITNESS: Thank you.

24 (Witness excused.)

25 THE COURT: Who is your next witness?

1 MS. KANOF: The government calls Liliana Narvaez.

2 Your Honor, can we approach the bench?

3 THE COURT: Sure.

4 (Bench conference.)

5 MS. KANOF: In regard to the motion to the limine on  
6 the photographs --

7 THE COURT: Oh, yeah.

8 MS. KANOF: -- of the furniture, and I also wanted --  
9 we didn't really talk about other photos. I wanted  
10 clarification before we went forward.

11 During cross-examination of Mr. Gireud, they went  
12 through all of his purchases at Ashley Furniture, and I think  
13 that made the photographs relevant, because Charlotte's is not  
14 Ashley's Furniture. And so I was going to basically ask the  
15 Court if I can go ahead and show these pictures and also if I  
16 can show one picture of the outside of the house, one of the  
17 condos and of each one of the vehicles?

18 THE COURT: Let me see it.

19 MS. KANOF: For her to identify it?

20 There're in Volume 4 towards the very back, like in  
21 the 140s. 151. Further down. Further down.

22 That's just a picture of the door to the condo.

23 That's to identify the photo. That's the SUV. One of them is  
24 the Land Rover. Yeah, that's the Land Rover. And that's the  
25 Suburban and that's exterior of the house. And the rest is the

1 interior of the house. Every single item in these pictures was  
2 purchased at Charlotte's with the exception of the artwork. Oh,  
3 I would remove this because of the -- I would remove that, the  
4 kitchen. He spent the money to refurbish. The artwork was not  
5 purchased, but the rest of the furniture is from Charlotte's.  
6 He spent a great deal of money to actually re-do the house.  
7 There's the backyard. The kitchen, the pool, \$15,000 for a  
8 deck.

9 MR. HANSHEW: We'll stipulate that the Court's list is  
10 property of the -- this is for inflammatory --

11 THE COURT: I don't find anything particularly  
12 inflammatory. It's just pictures.

13 The rule is it has to be -- it has to be substantial,  
14 outweigh its probative value. Perhaps it outweighs its  
15 probative value. I don't see it.

16 MS. KANOF: Especially since that lamp never worked.

17 THE COURT: I totally agree with you.

18 MR. HANSHEW: We're stipulating that all of the  
19 property on that Charlotte's list is at his house.

20 MS. KANOF: I think we have a right.

21 THE COURT: And I understand your objection, but the  
22 rule is in order to keep presumption of innocence relevant,  
23 evidence, it comes in. The exception of the rule is that if  
24 it's prejudicial substantially, underline substantially, how it  
25 outweighs the probative value. I can keep it out and I don't

1 think those photographs substantially outweigh --

2 MR. HANSHEW: For the record, purchases in the El Paso  
3 community to put on the record and show pictures of thousands of  
4 dollars of each piece of furniture in his home that that --

5 THE COURT: I'll let you make a record all you want  
6 for days. I'll never keep from you making your record.

7 MR. HANSHEW: I'm just making the record here on our  
8 motion in limine. I'll make one statement about it and then if  
9 I can ask for a continued objection, so I don't have to stand up  
10 in front of the jury.

11 MS. KANOF: That was exactly my point when he brought  
12 up the Ashley's Furniture.

13 THE COURT: I don't think that opens the door to this.

14 MS. KANOF: Thank you, Your Honor.

15 THE COURT: You said you aren't going to use that?

16 MS. KANOF: You know what? He did spend the money to  
17 refurbish the kitchen. They did incredible work on the  
18 cabinets. She'll testify about the unique person they hired to  
19 turn these cabinets into glass.

20 MR. HANSHEW: Exactly. This unique and does that mean  
21 incredibly expensive?

22 MS. KANOF: All right. I'll take it out.

23 (Bench concludes.)

24 (Witness present and sworn by the Court.)

25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

LILIANA NARVAEZ,  
  
DIRECT EXAMINATION BY THE GOVERNMENT  
  
BY MS. KANOF:  
  
Q. Good afternoon, Ms. Narvaez?  
  
A. Good afternoon.  
  
Q. Could you state your name for the jury, please?  
  
A. Liliana Narvaez.  
  
Q. Okay. That's your maiden name, correct?  
  
A. Correct.  
  
Q. You're recently married and haven't changed your name yet?  
  
A. Correct.  
  
Q. And how are you employed?  
  
A. I'm in sales.  
  
Q. Do you know Marco Delgado?  
  
A. I do.  
  
Q. How do you know him?  
  
A. I was in a six-year relationship with him.  
  
Q. Six years?  
  
A. Uh-huh.  
  
Q. Was that a serious relationship?  
  
A. Yes. We were engaged.  
  
Q. You were engaged?  
  
And when did that relationship end?  
  
A. It ended 2012.  
  
Q. Were you in a serious relationship with him during 2009,

1 2010, 2011?

2 A. Yes, I was.

3 Q. Okay. And at sometime, did he ask you sometimes to assist  
4 him from a business sense in some things in his business as an  
5 attorney?

6 A. Yes.

7 Q. Okay. What would he ask you to do?

8 A. He would ask me to present out things that he needed for a  
9 meeting or putting things in binders for him, things like that.

10 Q. Okay. And by -- when he would do that, how would he  
11 provide the documents to you?

12 A. He would sometimes bring them over or e-mail them to me.

13 Q. Okay. I'm going to show you, before I display this to the  
14 jury -- first of all, do you speak Spanish?

15 A. I do.

16 Q. Okay -- what's been marked for identification purposes as  
17 Government's 85. It's a document in Spanish. And do you  
18 recognize your e-mail address on that document?

19 A. Yes, I do.

20 Q. Okay. And did Mr. Delgado send that e-mail to you?

21 A. Yes.

22 MS. KANOF: Your Honor, we would move Government's  
23 Exhibit Number 85, the Spanish version, and 85A into evidence.

24 THE COURT: Mr. Hanshew?

25 MR. HANSHEW: No, objection, Your Honor.



1 THE COURT: 85 and 85A are admitted.

2 BY MS. KANOF:

3 Q. Okay. Is this an example of a document that he would send  
4 to you for your assistance in his legal business?

5 A. Yes. You can read right there where it says, (Spanish.)  
6 That means please print.

7 Q. Um --

8 A. You see?

9 Q. Yes, I see. Let me get the highlighter going. Are you  
10 talking about right there?

11 A. Yes.

12 Q. Would you -- the things that he would send for you to print  
13 or work on with him, did you read them?

14 A. No.

15 Q. No? So you don't know anything about the context of this  
16 document; is that correct?

17 A. Correct.

18 Q. Okay. But -- did you provide this to the United States  
19 government in a package of e-mails that you had received from  
20 Mr. Delgado?

21 A. Yes.

22 Q. Okay. So -- and the date of this is July 9th of 2010; is  
23 that correct?

24 A. Yes.

25 Q. Okay. So let's go and talk about a few other things.

1 Mr. Delgado had an e-mail header that had the words  
2 Calgary, El Paso and Mexico D.S.

3 MR. HANSHEW: Objection. Leading, Your Honor.

4 THE COURT: Let me hear the question.

5 BY MS. KANOF:

6 Q. Did he have an office in Calgary, Canada?

7 A. No.

8 Q. Did he have an office in Mexico City?

9 A. No.

10 Q. Did you go to Mexico City with him?

11 A. Often.

12 Q. Okay. Not just in relationship to the Agua Prieta II, but  
13 just as his girlfriend or fiancée?

14 A. I'm sorry. Not what?

15 Q. How often did you go?

16 A. Um --

17 Q. Over the years?

18 A. Over the years, maybe -- I don't know. A dozen times over  
19 six years?

20 Q. Did you go with him on business trips?

21 A. Well, I wouldn't go for business, but accompany him to  
22 spend weekends or...

23 Q. When he went on business, you would accompany him?

24 A. Yes.

25 Q. And then when he was finished with his business, you would

1 have a weekend together?

2 A. Correct.

3 Q. Did he ever mention to you that he was working on a project  
4 called Agua Prieta?

5 A. Yes.

6 Q. What did he tell you?

7 A. That it was a big -- he was putting together a big bid,  
8 some sort of plant.

9 Q. Did he say who he was putting it together with or for?

10 A. I just remember he had a lot of business partners.

11 Q. Okay. And do you remember who they were?

12 A. There were a lot of companies. I know there were a group  
13 from El Paso.

14 Q. And did you meet any of those people from El Paso?

15 A. Yes.

16 Q. Who?

17 A. Mr. Fernando Gireud.

18 Q. And had you ever met Mr. Fernando Gireud before?

19 A. No.

20 Q. And just when this project came up?

21 A. Correct.

22 Q. And did you socialize with him and his wife?

23 A. Yes.

24 Q. About how many times?

25 A. With him, a handful of times with he and his wife, maybe

1 one or two.

2 Q. Anybody else from El Paso for that project?

3 A. Mr. Miller.

4 Q. Okay. And anyone else from El Paso?

5 A. No, I think that's it.

6 Q. Okay. And did he tell you what the other companies  
7 involved, who the other companies involved were?

8 A. I would just hear different names. I know he was like the  
9 attorney handling I guess maybe the paperwork on it.

10 Q. That's what he told you?

11 A. Or that's what I assumed. I really never got into the  
12 details as to what his exact role was.

13 Q. But you made an assumption he was acting as an attorney?

14 A. Correct.

15 Q. Did you ever go to Mexico with him when he was working on  
16 this project?

17 A. Yes.

18 Q. Okay. About how many times?

19 A. About half a dozen times.

20 Q. And when you would go, where would you stay?

21 A. In hotels.

22 Q. Would you stay in the same hotels that his business  
23 partners were staying in? In other words, did you meet them in  
24 the hallway or did you go to dinner in the hotel with any of his  
25 business partners?

1 A. Maybe a couple of times we were in the same hotels, but I  
2 can't be sure of all of the times.

3 Q. Okay. Now, did he ever mention Mitsubishi Power Systems  
4 America to you?

5 A. Yes.

6 Q. In what capacity?

7 A. I would just hear him on the phone and, you know,  
8 Mitsubishi was one of the companies that was I guess as a part  
9 of this bid.

10 Q. And what about C.F.E. or the fideicomiso?

11 A. The electrical company in Mexico?

12 Q. Yes, any companies that you can recall mentioned was  
13 involved.

14 A. You know, he had business. He would mention business all  
15 over the world, so I can't tell you exactly what other  
16 companies.

17 Q. He mentioned business all over the world?

18 A. Uh-huh.

19 Q. Is that a yes?

20 A. I'm sorry. Yes.

21 Q. Can't spell, uh-huh.

22 A. I'm sorry.

23 Q. Where else did he say he had business?

24 A. He would go to France or Brazil.

25 Q. Did you accompany him to France?

1 A. No.

2 Q. Did you accompany him to Brazil?

3 A. No, never.

4 Q. So how do you know that's where he was?

5 A. Oh, I don't know.

6 Q. But that's what he told you?

7 A. Correct.

8 Q. When you were in Mexico, did you ever accompany him to any  
9 of his client meetings?

10 A. Yes.

11 Q. Okay. What meetings did you accompany him to?

12 A. When he would have maybe breakfast or lunch.

13 Q. With some of these people?

14 A. With certain, yes, individuals.

15 Q. Okay. And did you -- who would be present at some of these  
16 breakfasts or lunches? First, let me start with Mr. Fernando?

17 A. Fernando, sometimes.

18 Q. Was he always at these breakfasts or lunches?

19 A. No.

20 Q. How much -- when would -- in relationship to over time,  
21 when was Mr. Gireud present?

22 A. Maybe in the beginning, part of whatever the project was.

23 Q. Okay. About how many times?

24 A. A couple.

25 Q. And how about Mr. Miller? Was he over there when you were

1 at --

2 A. No, I never saw him in Mexico.

3 Q. Did you ever -- were there ever any people from Mitsubishi?

4 A. Yes.

5 Q. Do you remember meeting anybody from Mitsubishi?

6 A. I do.

7 Q. And do you remember their name?

8 A. No.

9 Q. Okay. Do you remember meeting anybody from C.F.E.?

10 A. Yes.

11 Q. Do you remember their names?

12 A. I don't.

13 Q. Do you remember -- did you ever meet a man named Ramos?

14 MR. HANSHEW: Objection, Your Honor. She asked and  
15 said no.

16 THE COURT: The question was do you remember meeting a  
17 man. I'll overrule that objection.

18 BY MS. KANOF:

19 Q. Did you ever --

20 MR. HANSHEW: Her question, Judge, was do you remember  
21 the name of anyone and now she's going to list off the names for  
22 her to answer the questions.

23 THE COURT: All right. I'm overruling the objection.

24 BY MS. KANOF:

25 Q. Did you ever meet a man named Ramos from C.F.E.?

1 A. Yes.

2 Q. Did you ever meet a man named Buendia?

3 A. Yes.

4 Q. Did you ever meet a man named Nereo Vargas?

5 A. Yes.

6 Q. When did you meet him?

7 A. When?

8 Q. Yes. Did you meet him during the Agua Prieta project or a  
9 different time?

10 A. No, it was when he was doing this project.

11 Q. And was Mr. Vargas present at the breakfasts or lunches  
12 with Mitsubishi?

13 A. No.

14 Q. Was Mr. Vargas present at the breakfasts or lunches with  
15 Fernando?

16 A. I think once.

17 Q. When you met with -- did you ever go to any meals with  
18 Mr. Vargas and Mr. Delgado?

19 A. Yes.

20 Q. Did you ever go to any meals with Mr. Vargas and  
21 Mr. Delgado where there were no other business partners present?

22 A. Yes.

23 Q. Okay. Could you tell the grand [sic] jury -- I mean the  
24 jury about that? I'm sorry.

25 A. About going?



1 Q. Yes, about the circumstances.

2 A. We would maybe meet for lunch or dinner in a restaurant or  
3 in a certain venue and Mr. Vargas had his partner, his  
4 girlfriend, I think. She was, there.

5 Q. Do you remember what she did for a living?

6 A. I have no clue. And I spoke a lot with her, but I don't  
7 remember. I'm sorry. We would just go and have lunch or  
8 dinner.

9 Q. Did they talk business?

10 A. Yes.

11 Q. Did you pay attention?

12 A. No.

13 Q. Did you ever go to Mr. Vargas' office?

14 A. Yes.

15 Q. And when was that? I'm not asking for a date.

16 A. Yeah, I don't remember dates.

17 Q. On one of these trips or more, how many times did you go to  
18 Mr. Vargas' office?

19 A. Two. A couple of times.

20 Q. And did you go with who?

21 A. With Marco.

22 Q. And did you go into Mr. Vargas' office with Marco?

23 A. Well, we would go in and then I would wait and he would go  
24 into a meeting with him and then I would be waiting outside in  
25 the waiting room.

1 Q. You didn't go into the meeting with Mr. Vargas?

2 A. No.

3 Q. Who did Mr. Delgado say Mr. Vargas was?

4 A. Businessman. He really never gave me the ins of who he was  
5 exactly. I don't know.

6 Q. Did he say that he was part of the business with --

7 MR. HANSHEW: Objection. Leading. She already  
8 answered.

9 THE COURT: Sustained.

10 BY MS. KANOF:

11 Q. So during this project, how many times you went you said  
12 about half a dozen times, how many of those half a dozen times  
13 did Mr. Delgado meet with Mr. Vargas?

14 A. Probably four, five.

15 Q. Did Mr. Delgado ever mention to you that he hired  
16 individuals to assist him in the project?

17 A. No.

18 Q. Did he ever mention a company called Ener Proyectos?

19 A. No.

20 Q. This e-mail, Government's Exhibit Number 85, you said you  
21 didn't read it; is that correct?

22 A. Correct.

23 Q. Have you ever heard of Ener Proyectos before I asked you  
24 about it?

25 A. I haven't.

1 Q. Did you ever go with Mr. Delgado to the C.F.E. building?

2 A. Yes.

3 Q. Did -- what did you do when you were at the C.F.E.  
4 building?

5 A. He would go and meet with different people there.

6 Q. Did you ever go with Mr. Delgado with individuals that were  
7 involved in the Agua Prieta business to Las Vegas?

8 A. Yes.

9 Q. Okay. Who went on that trip?

10 A. It was Fernando and his wife and Mr. Vargas and his  
11 girlfriend and Mr. Zaragosa and his wife and Marco and I.

12 Q. Was Mr. Gireud there?

13 A. Yes.

14 Q. And did you go on a trip in July of 2011 with Mr. Delgado  
15 to Florence, Italy?

16 A. Yes.

17 Q. Was that a business trip?

18 A. No, it was a family trip.

19 Q. Who went on that trip?

20 A. His mom. His brothers, myself, my daughter. His cousin.  
21 The cousin's son.

22 Q. Do you know who Paul Foster is?

23 A. Uh-huh. I'm sorry, yes.

24 Q. Were Paul Foster's parents with you on that trip?

25 A. No.

1 MR. HANSHEW: Mischaracterization. She sayings --

2 THE COURT: No, she answered no. She's the witness.

3 BY MS. KANOF:

4 Q. At the end -- how did that trip end? What was the last  
5 place that you visited?

6 A. The last place was Switzerland and that's when some of us  
7 flew back to the United States. Not everybody.

8 Q. Why did you go to Switzerland?

9 A. To pick up his daughter from summer camp.

10 Q. Did Mr. Delgado complain to you about not having money?

11 A. No.

12 Q. Did you ask him for money?

13 A. I'm sure I did. I don't remember.

14 Q. Did he ever tell you he didn't have to give it to you?

15 A. No.

16 Q. Did he ever tell you he had an account, a bank account in  
17 the Turks and Caicos --

18 A. No.

19 Q. -- islands?

20 A. No.

21 Q. At no time did he ever mention a Turks and Caicos Island  
22 bank account? I'm not asking to say when. I'm just asking if  
23 he ever mentioned it?

24 A. A bank account?

25 Q. Or money in the Turks and Caicos?

1 A. No.

2 Q. Who is Gabriel Larraguivel Delgado?

3 A. He's an architect and I guess slash builder that lives in  
4 Texcoco, Estado de Mexico.

5 Q. Could you spell that for the Court reporter please?

6 A. T-E-X-C-O-C-O and then E-D-O- period D-E [sic] and then the  
7 word Mexico.

8 Q. I'm displaying to you what's been marked as Government's  
9 Exhibit Number 141. Do you recognize that e-mail and its  
10 attachments?

11 A. Yes.

12 Q. Was that an e-mail sent to you?

13 A. Yes.

14 MS. KANOF: Move that Government's Exhibit 141 be  
15 admitted into evidence.

16 THE COURT: Mr. Hanshew?

17 MR. HANSHEW: No, objection.

18 THE COURT: 141 is admitted.

19 MS. KANOF: And also 141A, the English translation.

20 THE COURT: Mr. Hanshew?

21 MR. HANSHEW: No, objection.

22 THE COURT: 141A is admitted.

23 BY MS. KANOF:

24 Q. Okay. What is this document?

25 A. It's the proposal of a project that Mr. -- de Gabriel -- to

1 model the home that belongs to Marco's parents.

2 Q. Where is that home located?

3 A. In Texcoco.

4 Q. Do they actually live here in El Paso?

5 A. Yes. They live here and the mother would go back and forth  
6 because this is the house where they all grew up in.

7 Q. This e-mail is sent to you; is that correct?

8 A. Yes.

9 Q. Why are you receiving the e-mail with the invoice?

10 A. I think he was just doing it for --

11 Q. I don't want you to guess, if you don't know, but -- and  
12 who is he?

13 A. The architect.

14 Q. Okay.

15 A. For formality he would e-mail Marco and myself.

16 Q. Do you have any of the e-mails that he sent to Marco?

17 A. I don't know. Maybe. I haven't really checked.

18 Q. But that's your recollection that he would also?

19 A. Well, yes, because Marco and I would discuss, you know, him  
20 sending the proposal or whatever and we would talk about it.

21 Q. I'm going to go to the English version, 141A. And so he  
22 sent this to you; is that correct?

23 A. Uh-huh. I'm sorry, yes.

24 Q. And it was an estimate for Mr. Delgado; is that correct?

25 A. Correct.

1 Q. What does he say?

2 A. He says, house is going Liliana and Marco. I'm sending you  
3 the observations made after reviewing observations made by you.  
4 For any questions, we will be in contact. Your visit to the  
5 work site the is a bit complicated. Soon I will send you photos  
6 of the progress.

7 Q. And then attached to that, do you recognize the date is  
8 January 14th? Do you know what year that is?

9 A. I don't recall. Maybe it's on the e-mail. I don't know.

10 Q. This date is your transmission to the government, correct?  
11 That's not the date --

12 A. Yeah, no.

13 MR. HANSHEW: Objection. Leading.

14 THE COURT: Sustained.

15 BY MS. KANOF:

16 Q. Do you recognize this as being in pesos?

17 A. Yes.

18 Q. And is this one -- were there more than one invoices or  
19 estimates?

20 A. There were two, yes.

21 Q. Okay. Then let me show you Government's Exhibit  
22 Number 140.

23 MS. KANOF: Your Honor, which did I admit before? Was  
24 it 140?

25 THE COURT: You admitted two and it was 141 and 141A.

1 BY MS. KANOF:

2 Q. Now I'm going to show you Ms. Narvaez Government's Exhibit  
3 Number 140 from this same gentleman to you.

4 A. Can you go up so I can see the heading please?

5 Q. Yes.

6 Is that you're e-mail address?

7 A. Yes.

8 MS. KANOF: Move admission of Government's Exhibit  
9 Number 140 and 140A the English translation into evidence.

10 MR. HANSHEW: No objection.

11 THE COURT: GX140 and 140A are admitted.

12 BY MS. KANOF:

13 Q. And let me switch to the English version. Is this actually  
14 from you or from Mr. Delgado?

15 A. It's from Mr. Delgado.

16 Q. But the response is to your e-mail; is that correct?

17 A. Yes.

18 Q. And what is the arch -- what is the architect indicating to  
19 Mr. Delgado or what is Mr. Delgado indicating to the architect?

20 A. It's, greetings. The band just informed me that given the  
21 international nature of the transfer, they need additional  
22 information from you in order to make payment as soon as  
23 possible. I'm attaching the request, which I ask you to fill  
24 out as is, so as to avoid any delay in the work. Thank you so  
25 much. Please confirm receipt by this text. Regards.



1 Q. Okay. And did he ask for wiring information? Do you know?

2 Or do you know what this is?

3 A. No.

4 Q. Now, with regard to the international nature of the  
5 transfer, you were in receipt of this e-mail, correct?

6 A. Correct.

7 Q. And what does Mr. Delgado, if you know, referring to about  
8 the international nature of the transfer?

9 A. I don't know. I wasn't aware of this e-mail.

10 Q. Well, it's sent to you or you have it.

11 A. I think he sent it through my e-mail, but I had not seen  
12 this.

13 Q. Oh, he sent it through your e-mail?

14 A. Well, that's my e-mail address.

15 Q. And this was in your SBC Global e-mail account?

16 A. Correct.

17 Q. That's how you were able to provide it to the government?

18 A. Correct.

19 Q. Did you have access to use your e-mail account?

20 A. Yeah.

21 THE COURT: "Yes" or "no" please.

22 A. Yes.

23 BY MS. KANOF:

24 Q. Okay. Let me show you what's been marked and admitted into  
25 evidence as Government's Exhibit Number 2. Do you remember when

1 you first -- about what time you first went to Mexico and  
2 started talking to Mr. Delgado's architect about renovating  
3 Mr. Delgado's, the defendant's home, a parent's home?

4 A. 2000 -- well, I'm seeing here the date. I don't recall  
5 exactly. It's sometime around 2009, 2010.

6 Q. Okay. And I'm drawing your attention to Government's  
7 Exhibits Number 2, to the 11th of June of 2010. Do you see --  
8 is that the name of the individual we're talking about that I've  
9 highlighted?

10 A. Yes.

11 Q. And do you see \$52,000 being paid to him June 11th?

12 A. Yes.

13 Q. Do you know if that's the payment of a receipt an invoice?

14 A. I don't know.

15 Q. Well, next to it says reference loan.

16 MR. HANSHEW: Objection, Your Honor. She answered.  
17 She said no.

18 THE COURT: Well, she can test her knowledge. I'll  
19 overrule the objection.

20 BY MS. KANOF:

21 Q. Do you know whether or not Mr. Delgado had borrowed money  
22 from this individual?

23 A. No, I don't know.

24 Q. On July 21st of 2010, another \$50,000 to the same  
25 individual, again, reference loan. So now that's \$102,000 to

1 that individual. Do you recall whether he -- did you discuss  
2 with Mr. Delgado how much this renovation was going to cost?

3 A. I didn't because the he was paying for it, so...

4 Q. So you didn't pay attention?

5 A. Not really.

6 Q. Okay. Again, on August 11th, a \$40,000 payment to this  
7 gentleman. It's the same gentleman, correct?

8 A. Correct.

9 Q. But it says, reference, a loan?

10 A. Uh-huh. Yes.

11 Q. Okay. So that's now \$142,000. Do you -- what -- did you  
12 ever go and see this house?

13 A. Yes.

14 Q. Okay. Was it -- describe it?

15 A. It was the home where -- the house that belongs to Marco's  
16 parents and this is the home where they grew up. It's in the  
17 outskirts of Mexico City and it was a normal size home and Marco  
18 wanted to update it and remodel it for his mom.

19 Q. Let me jump forward a little bit. Do you know how much --  
20 eventually, Mr. Delgado bought a house that you-all were  
21 supposed to live in when you got married, correct?

22 A. Correct.

23 Q. Do you know how much was spent to remodel that house here  
24 in El Paso?

25 A. I have an approximate.

1 Q. How much approximately?

2 A. The remodel cost?

3 Q. Yes.

4 A. Maybe \$100,000.

5 Q. Is the house here in El Paso that he remodeled a more  
6 expensive house than the one in Mexico?

7 A. No.

8 Q. No? So the next payment, September 7th, 2010, to the same  
9 individual, reference, loan, \$150,000. Do you see that?

10 A. Uh-huh. Yes.

11 Q. All right. So not the greatest mathematician, but  
12 \$292,000, correct?

13 A. Correct.

14 Q. On the 8th of October, again, reference loan, to -- this is  
15 the same architect, right?

16 A. Correct.

17 Q. Another \$45,000; is that correct?

18 A. Correct.

19 Q. On December 10th, another \$45,000 to him reference a loan,  
20 correct?

21 A. Correct.

22 Q. On March 7th of 2011, \$83,000 to -- is that the same  
23 architect individual?

24 A. Yes.

25 Q. Okay. And I have lost count of the total, but how about

1 December 16 of 2011, was there another \$36,000 to him reference  
2 a loan?

3 A. Yes.

4 Q. And on July 13th of 2012, another \$14,826 reference a loan?

5 A. Correct.

6 Q. I think that's more than 200,000. I'm not a mathematician,  
7 but you're in sales, aren't you?

8 A. Yes.

9 Q. Is that a fair estimate, over \$200,000 for the renovation  
10 that were done at his parents' house?

11 A. Well, the house had been -- was in very bad condition and  
12 they pretty much had to -- they knocked down walls. They --  
13 they re-did a lot of it and they added a lot to it. They  
14 expanded. So, I mean it is a lot of money, but they did a lot  
15 of work. It was a long project.

16 Q. Did you see it finished?

17 A. Yes.

18 Q. We started to talk about -- did you ever meet Linda  
19 Medlock?

20 A. Yes.

21 Q. And I'll show you Government's Exhibit Number 141.

22 In addition to your e-mail address, and I'm not going  
23 to take the jury's time to look at it, but was your street  
24 address on this, if I can recall, on some of these invoices from  
25 the architect, your personal street address?

1 A. I don't recall.

2 Q. At some point in time, did you and Mr. Delgado go shopping  
3 for a ski cabin?

4 A. Yes.

5 Q. And did he purchase it?

6 A. Yes.

7 Q. Where?

8 A. In Taos, New Mexico.

9 Q. And can you just talk about the circumstances surrounding  
10 that?

11 A. We were spending a weekend in Taos and Marcos is an avid  
12 skier, and so he was looking for a good deal, a repo, something  
13 he could purchase.

14 Q. Okay. And was that -- and did he purchase it?

15 A. Yes.

16 Q. And was it located in Taos, New Mexico?

17 A. Yes.

18 Q. Okay.

19 MS. KANOF: Your Honor, we have a self-proving  
20 affidavit for the title records for the Condo Heart condominium,  
21 Government's Exhibit 150 and we'd move it into evidence.

22 MR. HANSHEW: No objection.

23 THE COURT: 150?

24 MS. KANOF: 150.

25 THE COURT: These were admitted through Mr. Gireud.

1 MS. KANOF: I'm sorry.

2 BY MS. KANOF:

3 Q. And let me just ask you, is that a picture of the front  
4 door of Condo Heart.

5 A. Yes.

6 Q. And that would be Government's Exhibit Number 153, do you  
7 recognize it?

8 THE COURT: That's -- that's not in evidence.

9 MS. KANOF: I know, Your Honor. I'm going to move it  
10 right now. We move admission of Government's Exhibit 153.

11 MR. HANSHEW: No, objection, Your Honor.

12 THE COURT: 153 is admitted.

13 BY MS. KANOF:

14 Q. Did you -- you talked about a minute ago about a house here  
15 in El Paso. Could you tell the jury about purchasing a house  
16 with Mr. Delgado?

17 A. Yes. Marco and I were engaged to be married and we were  
18 looking for a house for a couple of years, actually, and then I  
19 found one that I was driving by and I called him to come and  
20 look at it and we liked it and then we called the realtor to  
21 come and show it to us.

22 Q. And what happened?

23 A. And --

24 Q. How did it turnout?

25 A. You mean the remodeling?

1 Q. No. Did he buy it?

2 A. Oh, yes.

3 Q. He purchased the house; is that correct?

4 A. Yes.

5 Q. Okay. And what -- tell now to the jury about the  
6 remodeling.

7 A. Well, it was a house that was outdated, so Marco hired a  
8 gentleman and with the help of an interior decorator remodeled  
9 the house.

10 Q. Did you assist him in that endeavor?

11 A. Yes.

12 Q. In what way did you assist him?

13 A. I found the house.

14 Q. I mean in the remodeling?

15 A. Yes. Well, Marco had contact with the decorator. She had  
16 done prior projects with him, so he went to her immediately and,  
17 of course, I would sit with her with, you know, picking out  
18 furniture or materials and things like that.

19 MS. KANOF: We move admission --

20 Q. I'm showing you -- you're the only one that can see it --  
21 Government's Exhibit Number 157. Is that a photograph of the  
22 front of the house on Cerrito Feliz here in El Paso?

23 A. Yes, it is.

24 Q. Okay.

25 MS. KANOF: We'd move admission of 157, with the



1 exception of that one photograph, Your Honor.

2 MR. HANSHEW: Your Honor, we're going to object.

3 These photos are being presented to try to inflame the jury  
4 about the expenses in the home. We've already stipulated to all  
5 of the items they're going to show are items that were -- that  
6 came from the accountant. There's no reason to go through this,  
7 Judge.

8 THE COURT: That objection is overruled and 157 is  
9 admitted.

10 BY MS. KANOF:

11 Q. Okay. Is that the front of the house?

12 A. Yes.

13 Q. That you -- did you and Mr. Delgado purchase it together?

14 A. No.

15 Q. What happened there?

16 A. He bought it. It's only under his name.

17 Q. Did you expect to be on the title?

18 A. Yes, I think I did. But he -- he said it was going to be  
19 somehow a part of his law firm or something with business, so  
20 that it couldn't have my name on it, only his.

21 Q. So the first photograph -- let me just ask you, are you  
22 aware that -- tell me how Charlotte's Furniture was involved in  
23 the decorating of the house?

24 A. Well, the interior decorator I was telling you about helped  
25 Marco in prior projects was the one that helped us with this

1 house and she works for Charlotte's.

2 Q. And of course you didn't seem to be interested in the  
3 expenses. Do you know how much money was spent at Charlotte's?

4 A. Well, now I do, because I just saw it on the list.

5 Q. You just saw part of it?

6 Government's Exhibit Number 2, let me get some of this  
7 yellow stuff off of here real quick.

8 So first, the purchase of the house, would it be  
9 consistent with your memory that the house was purchased on May  
10 19th?

11 MR. HANSHEW: Objection, Your Honor. This line of  
12 questioning is leading and she's showing her and we already  
13 heard her answer: Well, now I know, because I'm looking at the  
14 screen you're highlighting. I mean, she's testifying.

15 THE COURT: Sustained.

16 BY MS. KANOF:

17 Q. I draw your attention -- do you remember when the house was  
18 purchased?

19 A. 2010.

20 Q. And you said that you didn't know about the Turks and  
21 Caicos account; is that correct?

22 A. Correct.

23 Q. Do you know how the house was paid for?

24 A. I know it was cash, because I saw the contract, but that's  
25 all.

1 Q. So we were starting to talk about Charlotte's. Tell us  
2 about what you know about the involvement of Charlotte's  
3 Furniture in the house?

4 A. Well, the interior decorator bought 90 percent of  
5 everything from Charlotte's to decorate the house.

6 Q. Did you go to Charlotte's?

7 A. Yes, a couple of times I went to Charlotte's and then other  
8 time she would bring catalogs or send e-mails with pictures and  
9 things like that.

10 Q. Were you -- did you accompany Mr. Delgado or did you do it  
11 yourself?

12 A. No, we -- in the beginning we went together and then I  
13 would make -- like if we were together, I would decide, if we  
14 were to part he would decide, so...

15 Q. Okay. So let's first look at this first photograph. And  
16 the photographs do have numbers on them. If I could get rid of  
17 that display at the bottom. This is photograph number two.  
18 What portion of the house is that?

19 A. This is the interior of the foyer.

20 Q. What items in this photograph were purchased from  
21 Charlotte's?

22 A. Everything except the artwork.

23 Q. This painting?

24 A. Uh-huh.

25 Q. Everything else; is that correct?

1 A. Correct.

2 Q. The rugs, also?

3 A. Yes.

4 Q. Okay. Picture number three, what part of the house was  
5 this?

6 A. This is the formal living room and dining room.

7 Q. And what items in this room were purchased from  
8 Charlotte's?

9 A. Everything except the draperies.

10 Q. And would that include the lamps, the mirrors and the items  
11 on top of the tables?

12 A. The small decorations were not all from Charlotte's, but  
13 all of the furniture was.

14 Q. Government -- page number four, what part of the home is  
15 this?

16 A. This is the family room.

17 Q. And what items in this room were purchased at Charlotte's?

18 A. Everything except the artwork and that little front table  
19 that you see right there, the -- that you just see a glance.

20 No, not --

21 Q. This little one here?

22 A. That one and the little chair on the right.

23 Q. This chair and table and that piece of artwork were not  
24 from Charlotte's; is that correct?

25 A. Correct.

1 Q. What this is number six? What room is this?

2 A. It's also the formal living and dining. It's just from  
3 another side.

4 Q. Had we seen this furniture already?

5 A. Yes.

6 Q. Number seven, what is this?

7 A. This is the master bedroom.

8 Q. And what pieces -- what items in this photograph were  
9 purchased at Charlotte's?

10 A. Everything except the mattress and the TV.

11 Q. Picture number eight is -- what part of the house is that?

12 A. This is part of the master. It's like a sitting area in  
13 the master.

14 Q. And what items in that photograph were purchased at  
15 Charlotte's?

16 A. Everything except the artwork and the floor arrangement.

17 Q. Number nine, did you -- was this -- well, what is this a  
18 photograph of?

19 A. The master bathroom.

20 Q. And was that part of the refurbish ment of the house that  
21 was done after the purchase?

22 A. Yes.

23 Q. And is there anything in there from Charlotte's?

24 A. The little bench, the rug.

25 Q. Is that another view of the same?

1 A. Yeah, the same thing another view.

2 Q. Number 11?

3 A. This is one of the bedrooms.

4 Q. Any items in that there not from Charlotte's?

5 A. Yes, the swinging chair.

6 Q. It's from Pier One, isn't it?

7 MR. HANSHEW: Objection.

8 THE COURT: Sustained.

9 BY MS. KANOF:

10 Q. And what else is not from --

11 A. Um, the work -- the artwork.

12 Q. These two pieces of artwork?

13 A. Correct.

14 Q. In this particular -- what room is this?

15 A. This is another bedroom.

16 Q. Is there anything in here that's from Charlotte's? Is the  
17 rug from Charlotte's?

18 A. The rug and the lamp, maybe.

19 Q. What is this?

20 A. This is the -- it's kind of like a second master that's  
21 towards the back of the room.

22 Q. And any items here purchased at Charlotte's?

23 A. Maybe just the chair at the desk.

24 Q. In this photograph, above the bed there is a cloth poster.  
25 What is that?

1 A. It's a poster of Bowdoin University and that's the school  
2 where one of Marco's sons attended, university.

3 Q. Picture number 14?

4 A. This is the backyard.

5 Q. Was that extensively renovated as well?

6 A. Yes, it was.

7 Q. 15?

8 A. This is the patio and the outdoor kitchen and the backyard.

9 Q. Was that added as well?

10 A. Yes, it was.

11 Q. Number 16?

12 A. This is the -- what do you call that swing? The hammock  
13 and the pool.

14 Q. Could you tell the jury a little bit about the pool? Was  
15 there something unique about the pool?

16 A. Yes. The pool was an infinity pool, so it had -- I don't  
17 know if you can notice on the right-hand side like two bowls  
18 that water would drop down from and then it had a back  
19 waterfall.

20 Q. Photo number 17, what part of the house is that?

21 A. This is part of the family room.

22 Q. And are there any items in that photograph that were  
23 purchased at Charlotte's?

24 A. All of those items except the artwork.

25 Q. Except this?

1 A. Correct.

2 Q. Photo number 18, what part of the house is that?

3 A. That's part of the formal dining room.

4 Q. Any items purchased at Charlotte's?

5 A. Yes, everything except the floral arrangement.

6 Q. Number 19, what part of the house is that?

7 A. This is a piece that was in the formal living room.

8 Q. And anything in that photograph that was purchased from  
9 Charlotte's?

10 A. That furniture piece.

11 Q. Number 20?

12 MR. HANSHEW: Again, Your Honor, I'm going to object.  
13 This is cumulative. I think the jury has got the idea that the  
14 house is full of property from Charlotte's Furniture. They  
15 don't need to waste everyone's time.

16 THE COURT: That objection is overruled.

17 BY MS. KANOF:

18 Q. Photograph number 20, what part is this?

19 A. This is part of the foyer.

20 Q. And what if anything in that photograph was purchased at  
21 Charlotte's?

22 A. Everything except the artwork.

23 Q. Number 21, was that a piece of furniture purchased at  
24 Charlotte's?

25 A. Yes.



1 Q. Number 22, was that piece of furniture purchased at  
2 Charlotte's?

3 A. Yes.

4 Q. Number 23, was that piece of furniture purchased at  
5 Charlotte's?

6 A. Yes.

7 Q. Number 24, was that piece of furniture purchased at  
8 Charlotte's?

9 A. Yes.

10 Q. What about the elephant?

11 A. Yes.

12 Q. Number 25, were all three of those pieces of furniture and  
13 rug purchased at Charlotte's?

14 A. Yes.

15 Q. Number 26, what is that?

16 A. A chandelier.

17 Q. And was it purchased at Charlotte's?

18 A. Yes.

19 Q. How about the artwork, no?

20 A. No.

21 Q. And number 27, what is that?

22 A. A chandelier.

23 Q. Purchased at Charlotte's?

24 A. Yes.

25 Q. How about the artwork?

1 A. No.

2 Q. Number 28, what is that photograph of?

3 A. It's the family room. That's a sofa, the carpet or the rug  
4 with a table and the two chairs.

5 Q. Was the table and the rug purchased at Charlotte's?  
6 Because I think we saw pictures of the other things.

7 A. Yes, uh-huh.

8 Q. And I think we've already seen that one.

9 Number 30, what part of the house is that?

10 A. That's part of the formal dining room.

11 Q. And was that purchased at Charlotte's?

12 A. Yes.

13 Q. Number 31, what is that?

14 A. That's part of the formal living room.

15 Q. And what items were purchased at Charlotte's?

16 A. All of them.

17 Q. And number 32?

18 A. Yes.

19 Q. What is that?

20 A. An elephant.

21 Q. Do you remember how much that elephant costs?

22 A. I have no clue.

23 Q. Number 33?

24 A. That's a brown statue.

25 Q. Of?

1 A. Of a horse.

2 Q. Does Mr. Delgado have horses?

3 A. Yes.

4 Q. How many?

5 A. Three.

6 Q. And was this brown statue purchased at Charlotte's?

7 A. Yes.

8 Q. How about this number 34, bronze statue of a horse?

9 A. Yes.

10 Q. And the table that it's none?

11 A. Also.

12 Q. What about the artwork?

13 A. No.

14 Q. Number 35, were these and the rug purchased at Charlotte's?

15 A. Yes.

16 Q. Number 36, was this piece of furniture that the horse's  
17 head is sitting on purchased at Charlotte's?

18 A. Yes.

19 Q. The artwork?

20 A. No.

21 Q. Number 37, this is a different table and rug. Were those  
22 purchased at Charlotte's?

23 A. Yes.

24 Q. And what is number 38?

25 A. Purchased at Charlotte's.

1 Q. What is it?

2 A. Oh, it's a fireplace cover and the little broom and shovel  
3 for the fireplace.

4 Q. Do you have any idea how much that cost?

5 A. No.

6 Q. Number 39, what room is that?

7 A. That is part of the master bedroom, Marco's office.

8 Q. Was that -- I guess is that a desk?

9 A. Yes.

10 Q. And was that purchased at Charlotte's?

11 A. Yes.

12 Q. And what is this?

13 A. This is a --

14 Q. Number 40.

15 A. A cabinet with drawers. It looks like an old fashioned  
16 file cabinet, but it's a cabinet.

17 Q. Is it an antique?

18 A. I think it's made to look like an antique.

19 Q. So did all of those drawers open?

20 A. No.

21 Q. Is there a -- was that purchased at Charlotte's?

22 A. Yes.

23 Q. There's something on top of that cabinet. Do you recognize  
24 what that is?

25 A. A printer.

1 Q. So, did Mr. Delgado have his own printer?

2 A. Yes.

3 Q. But why were you printing for him then?

4 A. Well, we didn't have this house when I was printing for  
5 him.

6 Q. Picture Number 41, what part of the house is that?

7 A. This is the sitting room in the master bedroom.

8 Q. And what items were purchased from Charlotte's?

9 A. Everything.

10 Q. Including the tapestry?

11 A. Correct.

12 Q. In addition to that during this time period, did  
13 Mr. Delgado also buy some vehicles?

14 A. Did I and Mr. Delgado or did Mr. Delgado?

15 Q. Mr. Del- -- I -- did you and Mr. Delgado? I don't know,  
16 did you?

17 A. No, not me.

18 Q. Did Mr. Delgado buy some vehicles?

19 A. Yes.

20 Q. Did he buy a Chevy from Rudolph Chevrolet? Do you  
21 remember?

22 A. I was never with him, but I saw the vehicles once they were  
23 purchased around the house.

24 Q. I'll show you the photo an a second.

25 MS. KANOF: We'd move admission of Government's

1 Exhibit Number 148, the title documents from Rudolph Chevrolet.  
2 There's a self-proving affidavit.

3 THE COURT: Any objection?

4 MR. HANSHEW: No, objection.

5 THE COURT: GX-148 is admitted.

6 BY MS. KANOF:

7 Q. Did he purchase a Land Rover?

8 A. Yes.

9 MS. KANOF: We'd move admission of Government's  
10 Exhibit Number 149, the title papers to the Land Rover, Your  
11 Honor. There's a self-proving affidavit.

12 MR. HANSHEW: No objection, Your Honor.

13 THE COURT: GX-149 is admitted.

14 BY MS. KANOF:

15 Q. And did he buy a Jeep?

16 A. Yes.

17 MS. KANOF: Move admission -- well, wait.

18 BY MS. KANOF:

19 Q. Before I do that, let me show you some photographs.

20 I show you Government's Exhibit Number 155. Do you  
21 recognize what's depicted in that photograph?

22 A. Yes.

23 MS. KANOF: Your Honor, we move Government's Exhibit  
24 155 into evidence.

25 MR. HANSHEW: No, objection.

1 THE COURT: GX-155 is admitted.

2 BY MS. KANOF:

3 Q. Is it on your screen?

4 A. Correct.

5 Q. What is it?

6 A. A Range Rover.

7 Q. I'm sorry. I think said a Land Rover? It's a Range Rover?

8 A. Correct.

9 Q. Mr. Delgado purchased that?

10 A. Yes.

11 Q. For whom?

12 A. For himself.

13 Q. Government's Exhibit Number 156, do you recognize that  
14 photo?

15 A. Yes.

16 Q. And what's depicted in it?

17 A. A Suburban.

18 MS. KANOF: Wed move Government's Exhibit 156 into  
19 evidence?

20 THE COURT: Any objection?

21 MR. HANSHEW: No, objection.

22 THE COURT: GX-156 is admitted in evidence.

23 BY MS. KANOF:

24 Q. And who did Mr. Delgado purchase that Suburban for?

25 A. For himself and the family.

1 Q. Government's Exhibit Number 154, do you recognize what's  
2 depicted in that photo?

3 A. Yes.

4 Q. Is it one of the vehicles we're talking about?

5 A. Yes.

6 MS. KANOF: I move Government's Exhibit 154 into  
7 evidence, Your Honor.

8 MR. HANSHEW: No objection, Your Honor.

9 THE COURT: GX-154 is admitted.

10 MS. KANOF: May we publish, Your Honor?

11 THE COURT: Yes, ma'am.

12 BY MS. KANOF:

13 Q. And is that the Jeep that he bought at the time?

14 A. Yes.

15 Q. And for who?

16 A. His son.

17 Q. You have talked about a lot of renovations that were made  
18 to the house; is that correct?

19 A. Yes.

20 Q. Were you with Mr. Delgado when some of these contractors  
21 were seeking to be paid?

22 A. Well, they would sometimes ask me, if you see him please  
23 remind him that we need the weekly payment or whatever.

24 Q. And how did he respond? Did you tell him?

25 A. Yes.



1 Q. Okay. Do you know whether or not he responded and  
2 contacted those individuals?

3 A. I don't know.

4 MS. KANOF: A moment, Your Honor?

5 Pass the witness.

6 THE COURT: Before we begin, Mr. Hanshew, let's go  
7 ahead and take a recess. I'd ask the jury to be back in the  
8 jury room at 4:10. We'll resume our proceedings at 4:10.

9 COURT SECURITY OFFICER: All rise.

10 (Break at 3:55 p.m. to 4:13 p.m.)

11 THE COURT: Let the record reflect that all members of  
12 the jury are present, the United States through its assistant  
13 United State's attorneys are present, the defendant and counsel  
14 is present.

15 The witness, Ms. Narvaez, is on the witness stand.

16 Mr. Hanshew?

17 MR. HANSHEW: Thank you, Your Honor.

18 LILIANA NARVAEZ,

19 CROSS-EXAMINATION BY THE DEFENDANT

20 BY MR. HANSHEW:

21 Q. Good afternoon, Ms. Narvaez.

22 A. Good afternoon.

23 Q. Is it fair to say you like Charlotte's Furniture, right?

24 A. Yes.

25 Q. And then you were asked earlier about how many times you

1 went to Mexico City with Mr. Delgado related to Agua Prieta,  
2 correct?

3 A. Correct.

4 Q. And you said about at least six times you went there?

5 A. Uh-huh, yes.

6 Q. And when you were there, did you help set up a war room, a  
7 suite at a hotel?

8 A. Well, they had a few days before they had to turn in this  
9 paperwork, whenever it was due, so Marco had kind of like a  
10 suite-style hotel with a big table, so everybody can be working,  
11 checking whatever needed to be turned in.

12 Q. The documents that they were going to turn in?

13 A. Correct.

14 Q. Okay. And you helped put those together as well?

15 A. Yes, I was copying and making binders.

16 Q. And Fernando Gireud was there?

17 A. Yes.

18 Q. And he was going through these documents as well?

19 A. Fernando, I guess he was there, but he would always go --  
20 we had to use multiple copy machines around the hotel.

21 Q. Right.

22 A. And we kept on making them jam, because we were copying so  
23 many documents, so he would run to one copy center and i would  
24 run to another and we were making lots of copies.

25 Q. The day when these documents were being taken for the

1 delivery, Mr. Gireud went a long, correct?

2 A. I believe so. I can't -- we were up all night long, so I  
3 remember at the end they all ran out, because they had to go  
4 turn this in, and I don't know exactly who was in the vehicle  
5 and who wasn't. I don't know.

6 Q. So this was -- this was a night and day project that you  
7 were --

8 A. It was. They were working around the clock, yes.

9 Q. And Mr. Delgado was working night and day on the project?

10 A. Yes.

11 Q. Thank you.

12 MR. HANSHEW: No further questions.

13 THE COURT: All right.

14 Ms. Kanof?

15 MS. KANOF: Your Honor, I don't have anything further.

16 THE COURT: May Ms. Narvaez be permanently excused?

17 MS. KANOF: Yes, Your Honor.

18 MR. HANSHEW: Yes, Your Honor.

19 THE COURT: Ms. Narvaez, thank you, ma'am, for coming  
20 down. You're free to go.

21 (Witness excused.)

22 THE COURT: Who is your next witness?

23 MR. ARREOLA: Your Honor, the government calls Mace  
24 Miller.

25 (Witness present and sworn by the Court.)

1 THE COURT: All right. Ms. Arreola?

2 MACE MILLER,

3 DIRECT EXAMINATION BY THE GOVERNMENT

4 BY MS. ARREOLA:

5 Q. Good afternoon, sir. Please introduce yourself to the  
6 jury.

7 A. My name is Mace Miller.

8 Q. Can you briefly describe your educational background?

9 A. I have an accounting degree from UTEP. I have an MBA from  
10 UTEP and I have a law degree from Texas Tech.

11 Q. When were you graduate from a Texas Tech?

12 A. 1994.

13 Q. Can you briefly walk us through your work history after law  
14 school up until 2009?

15 A. After school, I came back here to practice law locally.  
16 I'm originally from El Paso. And I practiced a firm called  
17 Miller and Hays and we did primarily construction work and  
18 estate planning and tax planning.

19 After doing that till about 1998, I began to work with  
20 a financial service firm here locally and then in 2001 I became  
21 a principal with Raymond James, which is a financial service  
22 firm as well.

23 From 2001 to 2006, I served in that capacity with  
24 Raymond James Financial Services. From 2006 to about 2008, I  
25 was a managing member of a hedge fund by the name of Coronado

1 Capital Advisors. I also ran a -- or owned and represented  
2 legally a third-party logistics, which is a transportation  
3 company.

4 Q. Did you have any professional licenses?

5 A. I've had various Series 7, Series 24, Series 6 financial  
6 services license and licensed attorney.

7 Q. And currently what professional licenses do you have at  
8 this point?

9 A. I'm not practicing law right now. I'm a licensed attorney,  
10 but I'm not practicing law.

11 Q. Did you have a proffer agreement from the government?

12 A. I did. Yes, I did.

13 Q. I would like to direct your attention to F.G.G. Did there  
14 come a time when you became involved with F.G.G.?

15 A. I did. Yes, I became involved with F.G.G. through --  
16 Fernando Gireud was working at my family's business and was  
17 going to eventually be the president of my family's business.  
18 Fernando was very competent professionally. And he formed  
19 F.G.G. Enterprises and that's how I became acquainted with  
20 F.G.G.

21 Q. And when he approached you -- is he the one that approached  
22 you about F.G.G.?

23 A. Yes.

24 Q. And when he approached you was it about any specific  
25 project?

1 A. Yes. It was about the, what I would call, the Agua Prieta  
2 project as related to furnishing equipment and long-term service  
3 agreement for C.F.E.

4 Q. Did you agree to work on that?

5 A. I did.

6 Q. What was your role going to be?

7 A. I was going to represent the company domestically. By  
8 domestically, I mean in the United States. I was going to  
9 interface with Mitsubishi Power Systems. And probably most  
10 importantly I was going to arrange for, given my background, and  
11 if we got the project, transportation, customs and so forth.

12 Q. Okay. And did you agree to work on the project?

13 A. I did.

14 Q. Did you become F.G.G.'s counsel?

15 A. I did, yes.

16 Q. Did F.G.G. have any other attorneys?

17 A. Yes. Marco Delgado was also an attorney for F.G.G.

18 Q. Did you know Marco Delgado when you became involved with  
19 F.G.G.?

20 A. I knew of him, a little bit. We had passed occasionally,  
21 but I didn't know him intimately.

22 Q. Did you have any prior business dealings with him?

23 A. No.

24 Q. Why did F.G.G. need two attorneys?

25 A. Marco was going to handle the -- Marco had experience

1 handling projects in Mexico, specifically with C.F.E. He would  
2 take -- he would be handling all of the work down in Mexico.  
3 And I would be handling the work primarily in the United States,  
4 as for as the transportation issues go, that would be my  
5 responsibility.

6 Q. Okay. And were you and Marco similarly situated with  
7 respect to being outside counsel or inside counsel?

8 A. I certainly think we both started as outside counsel and  
9 there was a time where I became working -- I -- this was  
10 consuming for me and I actually became inside general counsel.

11 Q. What is the different between inside and outside counsel?

12 A. Inside counsel is you're almost always just working on this  
13 project trying to handle administrative matters. And outside  
14 counsel you have an agreement as an attorney to provide service  
15 to that entity.

16 Q. Once you became involved, did there become a time where  
17 F.G.G. entered into an agreement with Mitsubishi Power Systems  
18 America or M.P.S.A.?

19 A. Yes.

20 Q. What was the agreement?

21 A. It was a title teaming agreement between F.G.G.  
22 Enterprises, LLC and Mitsubishi Power Systems.

23 Q. Government's Exhibit 7, do you recognize this?

24 A. I recognize this, the title. Yes, I don't have the whole  
25 document in front of me, but I recognize the title, yes.

1 Q. Okay. If you'd like to look at the documents, there's a  
2 series binders in front of you and you're welcome to pull out  
3 the entire document if you'd like.

4 A. This looks like the teaming agreement between F.G.G. and  
5 Mitsubishi.

6 Q. What role, if any, did you play in the drafting or  
7 negotiating of the teaming agreement?

8 A. Quite a bit. Several conversations, a dialog about certain  
9 terms and conditions. This was the -- this was a very important  
10 document for F.G.G.

11 Q. And what was the purpose of the teaming agreement?

12 A. The teaming agreement was to set out roles and  
13 responsibilities that related to the Agua Prieta-C.F.E. project.

14 Q. Did the teaming agreement create a letters of credit  
15 provision?

16 A. Excuse me?

17 Q. Did the teaming agreement create any terms regarding  
18 letters of credit?

19 A. Not to my knowledge. The responsibility to provide letters  
20 of credit by F.G.G. or Mitsubishi, is that the question?

21 Q. Yes, sir. Do you recall?

22 A. Yeah. F.G.G. was going to be providing letters of credit  
23 and Mitsubishi Power Systems was not.

24 Q. Okay. I'm going to ask you to take a look at a provision  
25 in the teaming agreement at page four. Can you read that



1 paragraph and we'll follow along?

2 A. Sure. F.G.G. will also provide any letters of credit  
3 required by the R.F.P. for the supply of equipment and services  
4 and cause the financing required by the R.F.P. to be provided or  
5 cause C.F.E. to waive such requirement as appropriate. F.G.G.  
6 will not be responsible for letters of credit or financing for  
7 the L.T.S.A.

8 Q. Okay. So can you briefly explain what the letters of  
9 credit were?

10 A. Okay. F.G.G. was bidding to C.F.E., and one of the  
11 conditions that F.G.G. had to satisfy was to provide these  
12 letters of credit for the benefit of C.F.E.

13 The letters of credit are a mechanism, a financial  
14 instrument, whereby if something went wrong with the project,  
15 that C.F.E. could go hit that with, what I would say, go and  
16 make a claim against that letters of credit and damages could be  
17 paid from that letter of credit.

18 Q. All right. Now this agreement -- this teaming agreement  
19 references a letter of credit for the supply of equipment and  
20 services, and then in the next sentence references a letter of  
21 credit for the L.T.S.A. Can you explain the difference between  
22 those two letters of credit?

23 A. Sure. There were two contracts awarded; one was for the  
24 equipment and services, the other was for a long-term service  
25 agreement. There were two distinct contracts but awarded with

1 the same bidding mechanism. As you read here, F.G.G. will  
2 provide any letters of credit required by the R.F.P. for the  
3 supply of equipment and services.

4 So that particular letter of credit was associated  
5 with bringing the gear over here, bringing the equipment over  
6 here, getting it on the right spot, making sure it wasn't  
7 damaged, making sure that the goods that C.F.E. was paying for  
8 was exactly what in fact they received. And so the equipment  
9 and services letter of credit was for that type of situation.

10 And then the L.T.S.A., which again the acronym [sic]  
11 is long-term service agreement, that was a separate letter of  
12 credit. And in this teaming agreement it was contemplated that  
13 Mitsubishi would provide -- be providing the long-term service  
14 agreement and F.G.G. therefore would not be responsible for the  
15 letters of credit for the L.T.S.A.

16 Q. Okay. The sentence also refers to financing for the  
17 equipment and services contract. With a was the difference  
18 between financing and letters of credit?

19 A. C.F.E. wanted, in their bid process they wanted to see if  
20 the provider could provide a financing mechanism to buy the  
21 equipment, okay, to -- not unlike a car loan, can you provide  
22 the financing so we can buy the equipment. That is completely  
23 different.

24 A letters of credit would be more like, okay, if  
25 something is wrong with the car, can I go hit something like a

1 warranty or letter of credit there in case there are any issues  
2 with the equipment, issues with F.G.G. performing their  
3 obligations under the contract.

4 Q. I'm going to scroll down and I'm going to read a section  
5 and then ask you a question.

6 F.G.G. shall, at its cost and expense, cause its legal  
7 counsel, Marco Delgado, to provide -- and I'm going to jump to  
8 subsection B -- provide initial liaison between F.G.G. and  
9 C.F.E. And then under Subsection E: Act as liaison between  
10 C.F.E. and F.G.G. and shall be responsible for assisting F.G.G.  
11 in developing a working relationship with C.F.E. and support the  
12 team throughout the performance of the equipment prime contract.

13 Why did the teaming agreement provide a specific  
14 provision stating in substance that Marco Delgado would act as a  
15 liaison between C.F.E. and F.G.G.?

16 A. It was thought to be important to have a -- definitive  
17 roles outlined, and specifically Marco had experience with  
18 regard to this and it was thought best to have one point of  
19 contact with C.F.E. so that a lot of information doesn't get  
20 crossed up. And frankly, he was the -- he was the most logical  
21 individual within F.G.G. or with any of service providers to  
22 handle that kind of thing.

23 Q. Do you speak Spanish, sir?

24 A. No.

25 Q. And is that actually what happened, is Marco the person who

1 became the liaison between C.F.E. and F.G.G.?

2 A. Certainly Marco was the liaison between F.G.G. and C.F.E.,  
3 yes.

4 Q. What, if anything, did Marco tell you about the Mexican  
5 side of the project, the side dealing with Mexico?

6 A. The Mexican side of the project was his responsibility and  
7 he would take care of it.

8 Q. What if anything did he say about who this project belongs  
9 to?

10 A. Marco I think felt that he was doing the brunt of the work  
11 and the project was, you know, most rightfully his; that he was  
12 handling the interface with C.F.E. and he was doing the brunt of  
13 the work, so he felt like it was his project, primarily.

14 Q. And what does that based -- understanding based on?

15 A. Just conversations we had within the group.

16 Q. I'm going to direct your attention to Government  
17 Exhibit 12. Now, this is a Spanish language document. I'm  
18 going to show you the English version in a second. Do you  
19 recognize this from the first page?

20 A. I recognize the title of the document, yes. I recognize  
21 what it is.

22 Q. I'm going to show you the English version. What do you  
23 recognize this document to be?

24 A. This is an agreement, a subcontract agreement whereby  
25 Mitsubishi would provide F.G.G. with the gear, the generators

1 and the steam turbo generator.

2 Q. Okay. And what role, if any, did you play in the  
3 negotiating or the drafting of the contract?

4 A. I was at the meeting when this contract was being  
5 negotiated. Interestingly enough, this was negotiated in Mexico  
6 City, even though this is an agreement between a United States  
7 company and another United States company with a Japanese  
8 parent. And I was present in the meeting when this contract was  
9 being negotiated.

10 Q. All right. And was this entered into after the teaming  
11 agreement?

12 A. Yes, this was after.

13 Q. What was the purpose of this subcontract?

14 A. Just to outline the terms and conditions whereby F.G.G.  
15 would acquire the equipment from Mitsubishi.

16 Q. Did it define the different obligations and promises  
17 between the parties?

18 A. To the extent that I remember, yes, it did.

19 Q. Okay. And did this subcontract give Mitsubishi Power  
20 Systems America any responsibility for the letter of credit for  
21 the equipment contract?

22 A. No.

23 Q. And if either party had agreed -- if Mitsubishi had agreed  
24 to provide something of value, would that have been provided in  
25 the subcontract?

1 A. I'm sorry. I didn't hear you.

2 Q. Oh, let me strike that question.

3 If Mitsubishi had agreed to provide the letter of  
4 credit or be responsible for the letter of credit, is that  
5 something the parties would have included in the subcontract?

6 A. Yes, this would be an appropriate document for that  
7 obligation.

8 Q. Now you testified -- you testified a moment ago that F.G.G.  
9 was responsible for the letters of credit for the equipment  
10 contract; is that right?

11 A. Correct.

12 Q. Did you take any steps to try to get the letter of credit  
13 for the equipment contract?

14 A. I did. Actually, I called several banks, inquired about  
15 the cost of the letter of credit and inquired about exactly what  
16 type of arrangement would be necessary for us to get that letter  
17 of credit. We met with private individuals to see if they would  
18 post the letter of credit on behalf of F.G.G. And so, yes, the  
19 answer to your question is yes, I did take a role in that.

20 Q. When you say you called banks, how much did they quote you  
21 for the letter of credit?

22 A. Typically, one to two percent, provided it was a standby  
23 letter of credit. The letter of credit is -- is basically, if  
24 it's a \$20 million of credit, you need to have \$20 million and  
25 then they'll charge you a percentage to issue that letter of

1 credit say one to two percent.

2 Q. Can you say in dollar terms how much that was?

3 A. That would -- you know that would be if you added an  
4 existing banking relationship, it could be \$400,000 if you had  
5 the 20 million. The 20 million could still be in -- it's still  
6 yours, you could have an account and the 20 million is still  
7 yours, but if the bank was going to issue a standby letter of  
8 credit based upon that asset, they're going to charge you  
9 between 200 to \$400,000.

10 Q. Were you successful in getting the letter of credit?

11 A. No.

12 Q. Why not?

13 A. Well, primarily because F.G.G. didn't have \$20 million,  
14 number one. So the first most logical deal would have been,  
15 hey, I got \$20 million, issue me this letter of credit.

16           Secondarily, if you don't have the \$20 million, you  
17 can get other individuals to post that for you, give them some  
18 sort of payment for that or business interest for that, but I  
19 was not successful in securing that type of arrangement.

20 Q. After you called the banks, did Marco Delgado at any time  
21 indicate that he had found a solution to the letter of credit?

22 A. Marco and I talked about the letter of credit and, yes, he  
23 indicated that he had found a solution.

24 Q. Okay. Can you tell us about that conversation? Where was  
25 it and where were you?

1 A. Marco was trying to get an alternative to the letter of  
2 credit. The letter of credit was really what was required. But  
3 he -- and actually, I believe that it was -- it maybe not have  
4 been Marco's idea. It may have been one of the owners of the --  
5 Rick Williamson's idea, at least that's what I was told, to  
6 maybe pledge the equipment, the existing equipment, pledge the  
7 equipment in lieu of the letter of credit. And so that would  
8 mean, hey, if you guys screw up, I am going to have the  
9 equipment, I'm going to have a pledge agreement for the -- in  
10 lieu of the letter of credit.

11 Q. Who told you this?

12 A. Marco had told me that he had -- that John Adams had agreed  
13 to pledge the equipment and this was good news.

14 Q. And where were you when Marco told you that John Adams  
15 agreed to pledge the agreement?

16 A. I remember that everybody was in Mexico City. I was  
17 standing on my balcony. This was good news. And so I remember  
18 the conversation distinctly.

19 Q. Now, did John Adams tell you that he had agreed to pledge  
20 the equipment?

21 A. No, he did not.

22 Q. Did you ever have any conversations with John Adams  
23 discussing a pledge of the equipment?

24 A. No. I, myself, did not.

25 Q. Okay. Did you reach out to Mitsubishi Power Systems



1 America to confirm whether or not they were going to agree to  
2 pledge the equipment?

3 A. I didn't have to reach out to them. They sent various  
4 correspondence basically stating that they were not interested  
5 in doing that.

6 Q. Okay. So after you began -- we're going to take a look at  
7 that correspondence in a moment -- but after Mitsubishi  
8 indicated in that correspondence they were not going to pledge  
9 the equipment, what happened?

10 A. After it game apparent that they were in the going to  
11 pledge the equipment, this was -- there had to be alternatives  
12 for this letter of credit. The letter of credit had to be  
13 posted. And Marco stated that he had found a solution for the  
14 letter of credit, Actually was going to get the letter of credit  
15 issued by another party.

16 Q. And who was that other party?

17 A. I believe the other party was the Union in Mexico.

18 Q. What did Marco say about the Union in Mexico?

19 A. That they would be -- that they were -- they had that kind  
20 of money and that they would be able to post that and have a  
21 letter of credit issued, and it was going to be good for the  
22 Union as well, because apparently union workers were going to  
23 work on this and so it made sense.

24 Q. Okay. So at some point did the conversation change from a  
25 pledge to the Union?

1 A. At some point when it came apparent that, hey, these guys  
2 don't want to pledge this equipment, they have to do -- we have  
3 to do something else, so, yeah, then it became again a letter of  
4 credit conversation.

5 Q. Okay. I'm going to ask you to take a look at Government  
6 Exhibit 14.

7 A. Okay.

8 Q. And then I'm going to scroll through here and ask you if  
9 you recognize it?

10 A. Yeah, I recognize it.

11 Q. Okay. And do you see a reference in here to an equipment  
12 inspection?

13 A. Give me one second, please. There it is. That makes it  
14 easier to find. Uh-huh.

15 Q. Did you have any conversations with Marco Delgado about an  
16 equipment inspection?

17 A. I did, actually. I was in El Paso. And I can't remember  
18 where Marco was. He was away and I was -- there needed to be an  
19 equipment inspection for due diligence purposes. And it was at  
20 a very inopportune time of the year. I can't see the date on  
21 this, but if I recall, it was around Christmas, and certainly  
22 during the holiday season and C.F.E. wanted to inspect the  
23 equipment and that was very difficult to arrange.

24 Q. Did Marco Delgado indicate to you why the equipment  
25 inspection needed to get done at that time?

1 A. Due diligence as far as awarding the bid and that was it.

2 Q. Did he indicate whether the equipment inspection had  
3 anything to do with a pledge of Mitsubishi's equipment?

4 A. No.

5 Q. I'm going to read from this document and then ask you a  
6 question.

7 A. Okay.

8 Q. Mitsubishi is once again very concerned about the  
9 informality of F.G.G.'s action on this project and the failure  
10 to respect M.P.S.A.'s request for information. Specifically, we  
11 are suspicious about, A, the short notice and apparent urgency  
12 for M.P.S.A. to support equipment inspections during end of your  
13 holidays and, B, F.G.G.'s failure to provide prime contract  
14 documentation which we have requested repeatedly. And I'm going  
15 to jump down to one, paragraph one.

16 The equipment inspection issue leads us to suspect  
17 F.G.G. may be offering existing M.P.S.A. equipment as collateral  
18 for financial guarantees that are the responsibility of F.G.G.  
19 This is unacceptable to M.P.S.A., therefore, please confirm that  
20 M.P.S.A.'s equipment is not being negotiated or offered to  
21 anyone as collateral and that no liens or restrictions of any  
22 kind are being discussed with any third parties.

23 Is this the type of letter that indicated to you that  
24 Mitsubishi did not want to pledge its equipment?

25 A. Yes. Very, very expressly, yes.

1 Q. Okay. And at any time did any official from Mitsubishi  
2 discuss pledging the equipment with you?

3 A. Me? No.

4 Q. When Marco told you about using the Union as a means of a  
5 letter of credit, did he say how that would get paid for?

6 A. It would have to be paid for out of the proceeds of the  
7 project.

8 Q. And at some point in time, did he indicate to you he had  
9 gotten the letter of credit?

10 A. He did. He indicated that he had secured the letter of  
11 credit and was going to have to be paid for out of -- out of, as  
12 I said, the proceeds of the equipment.

13 Q. Did you ask him for a copy of the letter of credit?

14 A. Many times.

15 Q. And what was his response?

16 A. He would get it to me. He's going to get it to me.

17 Q. Did you hear Fernando Gireud ask for a letter of credit?

18 A. Fernando asked for it as many times or more than I did.

19 Q. Did you ever see a letter of credit?

20 A. I never saw a letter of credit, no.

21 Q. Did Marco ever indicate to you that he had obtained a  
22 pledge of equipment from Mitsubishi? A formal pledge of  
23 equipment.

24 A. A formal -- the only time I learned about that was from  
25 Mitsubishi themselves.

1 Q. And that was approximately 2011?

2 A. I would imagine there was some correspondence, but yeah, I  
3 learned about that from Mitsubishi themselves.

4 Q. Okay. So we'll get to that in a few minutes.

5 A. Okay.

6 Q. I'd ask you to take a look at Government's Exhibit 15. Can  
7 you take a look at this and tell me if you recognize it?

8 A. Yes, I recognize it.

9 Q. Is this an e-mail from Mr. Delgado to you and Fernando  
10 Gireud?

11 A. Yes, ma'am.

12 Q. And is the e-mail date sent, December 30th, 2009?

13 A. Yes.

14 Q. I'm going to read the first line. Hoping the holiday  
15 season finds you well. I'm writing to update you with regard to  
16 the reference matter and to respond to relevant issue raised by  
17 your correspondence dated December 28th, 2009.

18 Is this a draft letter to respond to the  
19 December 28th, 2009 letter that we just looked at?

20 A. Can you go back up?

21 Q. Yes, certainly. We can go back to the other exhibit if you  
22 would like.

23 A. Just up on this one, between the e-mail and that.

24 Q. This way?

25 A. Yes, perfect. Thank you. Okay. Yes. The answer to your

1 question is, yes, this would be the response to -- to that  
2 correspondence.

3 Q. I'm going to ask you to take a look at paragraph two and  
4 read that quietly to yourself.

5 A. Okay. I've read that paragraph.

6 Q. I'm going to read a sentence from here and then ask you a  
7 question about this paragraph.

8 The sense of urgency of the inspection was and is  
9 F.G.G. driven in attempt to modify payment terms prior to  
10 execution of financing facility because otherwise the process  
11 will prove more bureaucratic.

12 What was your understanding of what Marco was saying  
13 regarding the reason for the inspection?

14 A. Just as stated in the preface to the highlighted part, in  
15 order to accelerate the payment, which would help with the  
16 transportation negotiation from the lender, that's why I came on  
17 so quickly, was my understanding of what it meant.

18 Q. Did Marco -- in any way, did Mr. Delgado -- excuse me -- in  
19 any way indicated in this paragraph that the purpose of the  
20 equipment inspection was in order to pledge Mitsubishi's  
21 equipment?

22 A. No.

23 Q. I'm going to read a line out of the paragraph below or a  
24 sentence from the paragraph below.

25 Regarding item one of your letter, please be advised

1 that although the inspection of equipment is not tied to any  
2 pending encumbrance on the M.P.S.A. equipment sold to F.G.G., as  
3 previously discussed, a lien will be placed in favor of the  
4 C.F.E., but at no time will this lien serve as collateral for  
5 the financing or the need of letter of credit.

6 Did Mitsubishi ever agree to the placement of a lien  
7 on its property?

8 A. Not to my knowledge.

9 Q. I'm going to ask you to take a look at Government  
10 Exhibit 35.

11 MS. ARREOLA: Your Honor, may I have one moment,  
12 please?

13 THE COURT: Yes, ma'am.

14 BY MS. ARREOLA:

15 Q. Okay. Let's go back to Government Exhibit 35. I apologize  
16 for the delay.

17 A. Okay.

18 Q. Can you take a look at this exhibit and tell me if you  
19 recognize it?

20 A. I do, yes.

21 Q. I'm going to scroll down and look at the attachment to  
22 this. Is this attachment of the January 12th, 2010, letter from  
23 John Adams to Mr. Gireud?

24 A. Yes, ma'am.

25 Q. And going back up to the e-mail, is this an e-mail from

1 Marco Delgado to you and to Fernando?

2 A. Yes.

3 Q. And the e-mail dated January 12th, 2010?

4 A. Correct.

5 Q. Okay. And in this e-mail, I'm going to read it to you and  
6 ask you a question.

7 Señor Mace, it's all yours. Arigato (Japanese).

8 What was your understanding of what Mr. Delgado was  
9 asking or telling you to do with this?

10 A. Probably deal with it in some way. I would have to look at  
11 the letter in more detail. I can only see this.

12 Q. Let's go ahead and look at the attachment.

13 A. So I was not copied on that. That would be the first time  
14 that I'm seeing that.

15 Q. I'm going to read from this letter and then ask you a  
16 question.

17 Please address the following --

18 MS. FRANCO: Your Honor, if I may, he said he wasn't  
19 copied on it. It's the first time he's seen it. How is he  
20 going to testify?

21 THE COURT: We'll, he's seeing it now.

22 BY MS. ARREOLA:

23 Q. Can you clarify that, sir, because on the first page it  
24 indicates that it says from Marco Delgado to Ann Miller. Is  
25 that your e-mail address?



1 A. No, the e-mail, I did -- I get -- I got e-mailed the  
2 letter. There's a point of reference is why it was being sent  
3 to me, which you asked me that question because I wasn't  
4 addressed on the letter, the actual letter.

5 Q. All right. Was the letter attached to this e-mail that  
6 Fernando sent to you?

7 A. Marco sent me the e-mail.

8 Q. Sorry. Pardon me.

9 A. Yes.

10 Q. Was the letter attached to the e-mails from Mr. Delgado?

11 A. Yes, yes. Exactly. I was just trying to provide some  
12 clarification as to why it was sent to me.

13 Q. When you indicated that it had -- you were seeing it for  
14 the first time, did you mean that you hadn't been copied on the  
15 letter when it was initially sent from Mr. Ponce to Mr. Gireud  
16 or January 12th?

17 A. Exactly. That was exactly what I was saying. And I was  
18 not copied on the top of the letter.

19 Q. All right, sir. Thank you.

20 A. Sorry about that confusion.

21 Q. So I'm going to read a sentence from this here and then ask  
22 you a question.

23 Please address the following items for our review, so  
24 we can reach agreement as quickly as possible.

25 Is it your understanding that Mitsubishi was asking

1 for a response from F.G.G. on the items listed in this letter?

2 A. Sure, yes.

3 Q. I'm going to read two sentences in this letter under  
4 paragraph five.

5 Please confirm with a letter of credit is required to  
6 guarantee this equipment contract. Please confirm that F.G.G.  
7 is posting such letter of credit and the date by which it was to  
8 be posted to satisfy the contract.

9 I'm going to jump below.

10 We had already agreed that M.P.S.A. will not provide  
11 any letter of credit for either contract. Please confirm F.G.G.  
12 will not ask M.P.S.A. to guarantee equipment or service  
13 obligations via any letter of credit.

14 What was your understanding when you saw this letter  
15 about the letters of credit?

16 A. That they're not going to be doing it and F.G.G. -- it's  
17 F.G.G.'s responsibility and it needs to be figured out.

18 Q. And is this another example of Mitsubishi making clear at  
19 the time to you that it was not responsible for the letters of  
20 credit?

21 A. Exactly, yes.

22 Q. Government's Exhibit 40. Actually 40A, the English  
23 translation. Is this an e-mail from Mr. Gireud to Mr. Ponce  
24 copying Mr. Delgado?

25 A. It seems to be, yes.

1 Q. And is the date sent indicated February 11th, 2010?

2 A. Yes, that's what I'm reading.

3 Q. I'm going to scroll down to the attached letter.

4 Is this the date on the letter, January 30th, 2010?

5 A. Yes, ma'am.

6 Q. And that is a few days after, when the e-mail was sent a  
7 few days after the date on that letter; is that correct?

8 A. Yes, ma'am. Yes.

9 Q. And is the letter from F.G.G. to Mr. Adams?

10 A. Yes, it is.

11 Q. I'm going to read from the first line of the letter.

12 We are in receipt of your January 12th, 2010,  
13 correspondence wherein you delineate several items requiring  
14 clarification.

15 Does this letter respond to the January 12th, 2010,  
16 letter that we just saw in the e-mail where Marco wrote, Señor  
17 Mace, it's all yours?

18 A. Yes.

19 Q. I'm going to read from a paragraph of this letter and then  
20 ask you a question.

21 All conditions precedent and obligations post-bid  
22 award have been met by F.G.G. M.P.S.A. will not be responsible  
23 for any letter of credit.

24 Where did this information come from that all  
25 conditions precedent and obligations post-bid have been met by

1 F.G.G.?

2 A. From Marco.

3 Q. And it writes here: M.P.S.A. will not be responsible for  
4 any letter of credit. Is that -- that language, was it your  
5 understanding that that language would have answered any of  
6 Mitsubishi's concerns about its equipment being pledged?

7 A. It certainly, very definitively states that they will not  
8 be responsible for any of the, in my mind, conditions of the  
9 contract, specifically, the letter of credit.

10 Q. I'm going to scroll back up to the e-mail, which was  
11 originally in Spanish and we're looking at the translation.

12 Mr. Gireud writes: Hector, here is the response to  
13 John's letter. Forgive the delay, but we had to review it with  
14 the Mexican attorneys and they're a bit slow.

15 Did you have any contact with any Mexican attorneys at  
16 this time?

17 A. I did, but much later in the process.

18 Q. And at this time, February 2010, did you have any contact  
19 with any Mexican attorneys?

20 A. I personally did not.

21 Q. And do you know who from F.G.G. contacted Mexican  
22 attorneys, if anybody?

23 A. At this stage of the game, I didn't think anybody had been  
24 in contact with Mexican attorneys, but that was not my deal.  
25 But I don't think anybody had contact with Mexican attorneys at

1 that time.

2 Q. So you don't know who's being referred to in this e-mail?

3 A. I don't.

4 Q. I'm going to ask you to take a look at Government  
5 Exhibit 21?

6 A. Okay.

7 Q. Do you see that this is a January 10th, 2010 letter on  
8 Mitsubishi letterhead addressed to Mr. Gireud with a copy to  
9 Mr. Delgado?

10 A. Yes, ma'am.

11 Q. Can you take a look at this, the contents of letter and let  
12 me know when you're done?

13 A. Okay. Okay. I've read the letter.

14 Q. When was the first time you saw this letter?

15 A. I believe when I was reviewing it with your office.

16 Q. At the U.S. Attorney's Office?

17 A. Yes.

18 Q. You testified that you asked Marco Delgado for a copy of  
19 the letter of credit; is that correct?

20 A. Sure, many times, yes.

21 Q. And when you asked him for it many times, did he ever tell  
22 you about this January 10th, 2010 letter?

23 A. He didn't tell me about this. At one point he told me that  
24 they had agreed to a pledge, but he didn't tell me that there  
25 was a document actually written in this these terms.

1 Q. He never showed this document to you?

2 A. No.

3 Q. And he never told you about it?

4 A. No.

5 Q. Now you're an attorney for F.G.G. In your view, was this  
6 type of letter sufficient to permit F.G.G. to go forward and  
7 pledge to Mitsubishi's equipment?

8 A. No. I would say that if somebody -- if I am C.F.E., okay,  
9 and I want a pledge from somebody, I would require the owner of  
10 that equipment to give me an attested to, 100 percent, no holds  
11 barred pledge. And so in my mind, if I'm C.F.E., I would not  
12 accept that.

13 Q. And how much money had Mitsubishi Power Systems America  
14 received from F.G.G. at this time, January 10th, 2010?

15 A. I have no idea. I would have to --

16 Q. Are you aware of them receiving any money at this time?

17 A. To be 100 percent accurate, I'd have to look at documents.

18 Q. Now as far as you know, did Mitsubishi Power Systems  
19 America ever give F.G.G. permission to pledge its equipment?

20 A. The only thing I heard about, that was from Marco telling  
21 me that they agreed to it, but, no, my personal independent  
22 knowledge I never saw them give permission.

23 Q. And did Mitsubishi Power Systems America, as far as you  
24 know, ever agree to satisfy the letter of credit requirement for  
25 F.G.G. for the equipment contract?

1 A. That's a 100 percent no.

2 Q. Pardon?

3 A. A 100 percent no. There was never any discussion that they  
4 were going to post any kind of letters of credit or if there was  
5 a discussion, it would last for about two seconds and the answer  
6 was no.

7 Q. What written agreements did Mitsubishi have with F.G.G.?

8 A. Well, we had a teaming agreement to initially set the  
9 parameters of the relationship and then we had the subcontract  
10 that was written in Spanish, and then I looked at the English  
11 version here a few minutes ago.

12 Q. Okay. And in either of those agreements, did Mitsubishi  
13 agree to provide the letter of credit for the equipment  
14 contract?

15 A. No.

16 Q. And under either of those agreements, did Mitsubishi agree  
17 to pledge it's equipment in lieu of the letter of credit for the  
18 contract?

19 A. No.

20 Q. Now did there come a time that you learned that Mitsubishi  
21 equipment had been pledged?

22 A. Yes.

23 Q. How did you learn that?

24 A. I learned that through a phone call with Mitsubishi and then  
25 various e-mails after that.

1 Q. When did -- when -- approximately, what year was this?

2 A. Oh, I would have to look at specific documents. It's  
3 delineated in some e-mails.

4 Q. Okay. And do you remember who the phone call was with at  
5 Mitsubishi?

6 A. If my memory serves me correctly, it was with Patrick  
7 Altamura, general counsel for Mitsubishi.

8 Q. Okay. And what did he say on the call and what did you  
9 say?

10 A. He said, basically --

11 MS. FRANCO: Objection, Your Honor. Calls for  
12 hearsay.

13 THE COURT: Sustained.

14 BY MS. ARREOLA:

15 Q. I'm going to ask you to take a look at Government Exhibit  
16 Number 93.

17 A. Yes, ma'am.

18 Q. Do you recognize this?

19 A. Yes. Yes, I do.

20 Q. Okay. So I'm going to -- excuse me one second.

21 At the bottom of this e-mail chain is there an e-mail  
22 sent February 24th, 2011, from Kevin Beddard to -- excuse me --  
23 Marco Delgado -- and do you know if you were a recipient of this  
24 e-mail?

25 A. It looks I am. My name is in that chain.



1 Q. So I'm going to go ahead and read from this and ask you a  
2 question.

3 Dear, sir, can you urgently confirm or rebut by return  
4 if F.G.G. used our equipment as a guarantee in a pledge  
5 agreement with C.F.E. in place of a letter of credit? Please be  
6 informed that M.P.S.A. is the sole owner of the title to the  
7 equipment until receipt of payment in full. Your urgent reply  
8 is required by return.

9 Did I read that correct?

10 A. Yes, ma'am.

11 Q. Was the phone call that you received from counsel for  
12 Mitsubishi notifying you about the pledge, was it around this  
13 time period, February 24th, 2011?

14 A. Yes, ma'am.

15 Q. So did you learn about the pledge at around -- first  
16 learned about the pledge at around this time?

17 A. It would be around that time, yes.

18 Q. And in response to that e-mail from Mr. Beddard, what did  
19 you say?

20 A. I'll read it. I said, Kevin, who are you quoting? If you  
21 recall in the last e-mail there was some quotes. I just spoke  
22 to Fernando and he has no knowledge of deviation from the specs.  
23 Mace.

24 Q. So is it fair to say that on February 24, 2011, you had no  
25 idea there was a pledge agreement for the equipment?

1 A. Yes, ma'am. That's correct.

2 Q. And what if anything did Fernando Gireud say to you about  
3 his knowledge of a pledge of the equipment?

4 MS. FRANCO: Objection, Your Honor. Calls for  
5 hearsay.

6 THE COURT: Sustained.

7 BY MS. ARREOLA:

8 Q. I'm going to ask you to take a look at Government Exhibit  
9 94. This is already in evidence. And I'm going to ask you to  
10 take a look at the contents of this e-mail. Tell me when you're  
11 done reviewing it.

12 A. Okay. Okay.

13 Q. Okay. Now do you see this is an e-mail from Marco Delgado  
14 to Mr. Gireud and you are not copied on this; is that correct?

15 A. That's correct.

16 Q. And is the date February 25th, 2011?

17 A. Yes, ma'am.

18 Q. All right. So I'm going to now show you Government  
19 Exhibit 95. I'm going to scroll down. At the bottom of  
20 Government Exhibit 95, do you see an e-mail from you to Fernando  
21 dated February 28th?

22 A. Yes, ma'am.

23 Q. And in this e-mail, did you include the paragraphs that  
24 were in the e-mail that we just looked at from Marco Delgado to  
25 Fernando Gireud?

1 A. Yes, I did.

2 Q. And did you -- have you looked at this before at the U.S.  
3 Attorney's Office, these two e-mails together?

4 A. I have, yes.

5 Q. And is the e-mail -- did you copy exactly the e-mail that's  
6 in Government Exhibit Number 94, which I will show you again?  
7 Did you copy this e-mail exactly in the e-mail that you sent to  
8 Mr. Gireud?

9 A. Yes, it appears I did, yes.

10 Q. Was there an additional paragraph in here?

11 A. Yes, ma'am.

12 Q. And is that the paragraph that begins: Regarding another  
13 matter?

14 A. Correct.

15 Q. All right. So at some point, the e-mail that Marco Delgado  
16 sent to Fernando Gireud with the response to Kevin somehow was  
17 forwarded or reached you somehow; is that correct?

18 A. Apparently, yes.

19 Q. Okay. And after you sent this e-mail from -- to Fernando  
20 Gireud, did he then, according to this, did he then send it to  
21 Marco Delgado?

22 A. That's what it says in the text of the e-mail, so I assume  
23 so.

24 Q. At the top of the e-mail chain, do you see an e-mail from  
25 Mr. Delgado to Mr. Gireud, copying you?

1 A. Yes, ma'am.

2 Q. Okay. And does he write está perfecto (Spanish)?

3 A. He does.

4 Q. All right. So this e-mail, do you see it's dated  
5 February 2011?

6 A. Yes, ma'am.

7 Q. I'm now going to show you Government Exhibit Number 96. Is  
8 this an e-mail from you to Kevin Beddard?

9 A. Yes.

10 Q. And is Marco Delgado and Fernando Gireud, are they copied  
11 on this e-mail?

12 A. Yes, ma'am.

13 Q. And this e-mail is dated February 28th, 2011; is that  
14 right?

15 A. Correct, yes.

16 Q. And if you look at this e-mail, did you -- is this the  
17 e-mail that we just looked at that was forwarded to Marco  
18 Delgado where he responds está perfecto (Spanish)?

19 A. Yes.

20 Q. So let's go ahead and take a look at this e-mail, because  
21 I'm going to ask you some questions about it.

22 So our computer seems to have died.

23 A. I see that.

24 Q. Or taking an early break for the weekend. Let me see if I  
25 can show you a hard copy.

1 MS. ARREOLA: Your Honor, is Government Exhibit 96 not  
2 in evidence?

3 THE COURT: 96 is not.

4 MS. KANOF: Oh, I apologize that it was not shown to  
5 the jury.

6 Your Honor, the government offers what's been marked  
7 for identification as Government's 96.

8 MS. FRANCO: No, objection, Your Honor.

9 THE COURT: GX-96 is admitted.

10 BY MS. ARREOLA:

11 Q. All right. The computer is back up.

12 All right. So I'm going to go ahead and highlight  
13 some things about this e-mail to you. This is -- is this an  
14 e-mail to you from Mr. Beddard?

15 A. Yes.

16 Q. And did you copy Fernando and Mr. Delgado?

17 A. Yes, ma'am.

18 Q. Okay. And is this a response to Kevin's earlier e-mail  
19 asking you about the pledge?

20 A. Yes.

21 Q. All right. Okay. So I'm going to read from this and ask  
22 you a question.

23 As reflected by your records in the copy of the  
24 C.F.E.-F.G.G. Agua Prieta contract in your possession, pursuant  
25 to John Adams' request and final approval, said equipment was

1 pledged with a clear understanding that M.P.S.A. is the sole  
2 owner to the title of the equipment until receipt of payment in  
3 full.

4 Are you aware of any request by John Adams in final  
5 approval by John Adams? Let me withdraw that.

6 Did you ever receive any request for final approval  
7 from John Adams to pledge the agreement?

8 A. I, individually, did not.

9 Q. Okay. And why did you send this?

10 A. Because that was the answer given to me by Marco and  
11 Fernando. At this point, I had to find out what was going on  
12 and this is the answer they gave me.

13 Q. You didn't have any personal knowledge or see anything to  
14 support that John Adams had requested or given final approval  
15 for pledge of the equipment?

16 A. That's correct.

17 Q. You were relying solely on that e-mail from Marco Delgado?

18 A. Yes, ma'am.

19 Q. During John's visit and negotiations with C.F.E. prior to  
20 final execution of the contract, said agreement was reached and  
21 memorialized as such.

22 Were you present during any visit by John Adams and  
23 negotiations with C.F.E., in which an agreement was reached to  
24 pledge the equipment?

25 A. No.

1 Q. Let me continue on.

2 For further reference and clarification on any and all  
3 of the technical, administrative or financial agreements related  
4 to the Agua Prieta project, please refer to the copies of the  
5 final agreement and its attachments that were approved and  
6 signed page by page by John Adams in his capacity of M.P.S.A.,  
7 officer in charge of the project and M.P.S.A.'s agent, Hector  
8 Ponce.

9 Did you see any technical, administrative or financial  
10 agreement in which the equipment -- Mitsubishi agrees to pledge  
11 the equipment?

12 A. I personally did not, no.

13 Q. And there was a reference here to a final agreement and its  
14 attachments that were approved and signed by John Adams. What  
15 is the final agreement being referred to here?

16 A. I believe it's the final agreement between F.G.G. and  
17 C.F.E., that's my understanding.

18 Q. And do you know if John Adams was a signatory to that  
19 contract?

20 A. I did not know that. No, he was not, but I had heard  
21 previously that he was there when it was signed.

22 Q. Did you understand that Mitsubishi was not a party to that  
23 contract?

24 A. Yes, ma'am. They definitively were not.

25 Q. Okay. I'm going to now ask you to take a look at

1 Government Exhibit 97. I'm going to ask you to take a look at  
2 this and tell me if you recognize it?

3 A. Yes.

4 Q. Is the e-mail that we just looked at from you to  
5 Mr. Beddard on February 28th, 2011? Is that at the bottom of  
6 this e-mail chain?

7 A. Yes, ma'am.

8 Q. And at the top of the e-mail chain, is that the top of the  
9 response from Mr. Beddard to you?

10 A. Yes, ma'am.

11 Q. And did he also copy Mr. Delgado on that e-mail?

12 A. Yes, ma'am.

13 Q. So I'm going to read what Mr. Beddard wrote and then ask  
14 you a question.

15 Mace, M.P.S.A. did not agree with your confusing and  
16 vague explanation in your e-mail. M.P.S.A. requires that F.G.G.  
17 immediately, by return e-mail provide a copy of the specific  
18 document which F.G.G. claimed contains John Adams' request and  
19 final approval that the M.P.S.A. equipment be pledged in place  
20 of a letter of credit which was to be procured by F.G.G.

21 What did you do in response to receiving this e-mail  
22 from Mr. Beddard?

23 A. My -- I imagined that I asked for the copy of the specific  
24 document which contains John Adams' request and final approval.

25 Q. And who did you make that request to, if you recall?



1 A. I don't recall, frankly.

2 Q. Okay. Did you ever receive --

3 A. It would have been Fernando or Marco.

4 Q. Did you ever receive any document which contained John  
5 Adams' request and final approval for the pledge of the  
6 equipment?

7 A. No.

8 Q. I'm going to now ask you to take a look at Government  
9 Exhibit 98. Tell me if you recognize this.

10 A. I do.

11 Q. Is this an e-mail from Mr. Delgado to Kevin Beddard,  
12 copying you, sent March 1st, 2011?

13 A. Yes, ma'am.

14 Q. And this is Mr. Delgado's response to Mr. Beddard's e-mail?

15 A. Yes, it is.

16 Q. Okay. Can you read the response? And then I'm going to  
17 ask you a question.

18 A. All right. If M.P.S.A. agrees or not, that is their  
19 problem. Please refer to Adams' signed copy of the contract.

20 Q. What was your understanding of the contract that  
21 Mr. Delgado was referring to?

22 A. I'm sure that I didn't quite understand that, but the  
23 signed copy of the contract that I'm -- that I'm thinking that  
24 is, is a contract between F.G.G. and C.F.E.

25 Q. And was Mr. Adams a signatory on that contract?

1 A. No.

2 Q. And was Mitsubishi a party to that contract?

3 A. No.

4 Q. I'm going to ask you -- did Mr. Delgado ever provide you a  
5 signed contract in which Mitsubishi agreed to pledge its  
6 equipment?

7 A. No. And maybe I was misinterpreting what -- a signed copy  
8 of the contract. That was my impression of what that meant.

9 Q. I'm going to ask you to take a look at Government Exhibit  
10 108.

11 A. Yes.

12 Q. Can you tell me if you recognize this?

13 A. I do.

14 Q. Is this an e-mail from you to Mr. Beddard, copying  
15 Mr. Delgado?

16 A. It is.

17 Q. And was this sent March 21st?

18 A. Yes.

19 Q. So I'm going to go ahead and read from this and ask you  
20 some questions. Or actually, I'm going to ask you to read and  
21 we'll read along with you. If you can start at the beginning?

22 A. Dear Kevin, regarding your electronic communication dated  
23 March 17th, 2011, dealing with the referenced matter, I have  
24 been instructed by F.G.G.'s board of directors to advise you of  
25 the following information given M.P.S.A.'s attempt to -- and I'm

1       sorry, the little deal is in the way. What does that say -- and  
2       misconstrue the facts -- oh -- obfuscate and misconstrue the  
3       facts.

4       Q.     So let me stop you there. Who is F.G.G.'s board of  
5       directors?

6       A.     F.G.G. is a single member LLC. There's only one. There's  
7       only one board that's essentially Fernando.

8       Q.     Okay. And did you write this e-mail?

9       A.     Fernando Gireud.

10      Q.     Did you write this e-mail, sir?

11      A.     I don't know. I sent it. It -- I probably did.

12      Q.     Okay. Does this sound like the type of letter you would  
13      write? Do you use this type of language?

14      A.     Well, I've never used the word obfuscate in my entire life  
15      and, honestly, I don't know what it means.

16      Q.     And how about Mr. Gireud, does he write like that?

17      A.     Mr. Gireud does not write like that. He might write like  
18      that in Spanish, but not in English.

19      Q.     Okay. So I'm going to scroll down and ask you a question.  
20      Or I'm going to ask you to read and we'll follow along. Can you  
21      read starting at paragraph two?

22      A.     Sure. M.P.S.A.'s denial of authorization and knowledge of  
23      the pledge agreement is the third and latest attempt by M.P.S.A.  
24      to disavow consent and knowledge of key negotiations and  
25      commercial terms reached with C.F.E. in conjunction with

1 M.P.S.A. agent, Hector and John Adams.

2 Q. Now at the time that you except this letter, March 21st,  
3 2011, had you seen any pledge agreement?

4 A. I had not seen the pledge agreement, no.

5 Q. So why did you accept this e-mail?

6 A. Because that was the position given to me by F.G.G. I'm  
7 not F.G.G. I'm communicating that for F.G.G., because that's  
8 what was told to me.

9 Q. Okay. And were you aware of any negotiations and  
10 commercial terms reached with C.F.E. in connection with M.P.S.A.  
11 agents Hector Ponce and John Adams regarding a pledge?

12 A. All --

13 Q. Did you have any personal knowledge?

14 A. All I knew is that Marco had told me that they had had a  
15 conversation, but I never -- I wasn't there and I had no  
16 personal knowledge.

17 Q. Okay. Can you continue reading with "bear in mind"?

18 A. Bear in mind, however, that just as in the previous denials  
19 dealing with approval of payment terms and changes throughout  
20 the payment schedule, F.G.G. has the corresponding pertinent  
21 e-mail flow, handwritten notes from your agent, as well as the  
22 formal approval submitted to C.F.E. at the time that both your  
23 agents reviewed and initialed page by page of the contract,  
24 included the aforementioned pledge agreement.

25 Q. Okay. I'm going to stop you there. Are you aware of any

1 e-mail flow, handwritten notes from M.P.S.A. agents?

2 A. I never -- I never saw any of that, no.

3 Q. Okay. So let me go ahead and --

4 A. But I was glad to hear we had.

5 Q. Let me go ahead and finish the question.

6 Are you aware of any handwritten notes from M.P.S.A.  
7 agents providing formal approval for a pledge?

8 A. I am not aware of any, no.

9 Q. So again, if you weren't aware of any pertinent e-mail flow  
10 or handwritten notes, why did you send this e-mail?

11 A. Because that was communicated to me by F.G.G., who I am --  
12 that's who I represent is F.G.G.

13 Q. All right. Was there a payment schedule under the contract  
14 between F.G.G. and C.F.E., in other words the prime contract?

15 A. Sure there was a payment schedule.

16 Q. Okay. And do you remember what the first two payments were  
17 supposed to be?

18 A. If memory serves me correctly, I believe 20 million and 12  
19 million.

20 Q. Okay. I'm going to show you Government Exhibit Number 50.  
21 I'm going to ask you to take a look at this and let me know if  
22 you recognize it.

23 A. Yes.

24 Q. Is this an e-mail from Mr. Delgado to John Adams, you and  
25 others?

1 A. Yes, ma'am.

2 Q. And is the date of the e-mail March 25th, 2010?

3 A. Yes, it is.

4 Q. So I'm going to read from this and ask you a question.

5 Attached, please find C.F.E. confirmation of revised  
6 payment plan. This allows us to proceed with the assignment of  
7 collection rights prior to issuance of first payment.

8 Why -- what was your understanding of why C.F.E. had  
9 revised the payment plan?

10 A. Well, I heard a lot of different things, economic  
11 conditions. That was primarily the reason I was given, economic  
12 conditions. I thought it was absurd that there was a revised  
13 payment plan.

14 Q. And where did you hear the reason for the revised payment  
15 plan? Where did it come from?

16 A. From Marco. Either from Marco or from Fernando.

17 Q. Okay. So I'm going to ask you to take a look at Government  
18 Exhibit 50A, which is a translation.

19 A. (Complies.)

20 Q. Under the revised payment plan, what was the amount of the  
21 first payment supposed to be to F.G.G.?

22 A. 15 -- this is in millions, United States dollars, 15  
23 million.

24 Q. Okay. And under the original payment plan, what was the  
25 amount of the first payment supposed to be?

1 A. If memory serves me correctly, 20 million.

2 Q. Do you see that the date is March 25th, 2010?

3 A. Yes, ma'am.

4 Q. I'm going to ask you to take a look at Government  
5 Exhibit 2. Were you aware when you received that e-mail  
6 regarding a revised payment plan on March 25th, 2010, that a few  
7 weeks earlier on March 9th, 2010, C.F.E. had already made the  
8 first payment of \$20 million into an offshore account in the  
9 Turks and Caicos Islands?

10 A. No, I wasn't.

11 Q. I'm going to ask you to look again at Government  
12 Exhibit 50. Do you see the references to collection rights?

13 A. Yes, I do.

14 Q. What was your understanding of what -- with -- did F.G.G.  
15 have a relationship with Mitsubishi regarding collection rights?

16 A. They did.

17 Q. What was that agreement?

18 A. C.F.E. owed F.G.G. money. F.G.G. owed Mitsubishi money.  
19 Mitsubishi did not want to have and I didn't want F.G.G. having  
20 custody of the money and then paying Mitsubishi. And so  
21 assignment of collection rights means C.F.E. is not going to pay  
22 F.G.G. the entire amount and then F.G.G. pay Mitsubishi.  
23 Instead, Mitsubishi was going to be able to collect what was  
24 owed to them directly.

25 Q. All right. And the parties actually reached that agreement

1 to do that? Did F.G.G. actually agree to assigned collection  
2 rights to Mitsubishi?

3 A. Yeah. Yes. This was a good thing. I mean I, in  
4 particular, was very much for that, because I didn't want to  
5 have custodianship of Mitsubishi's money, and I didn't want to  
6 have to pay them -- on that amount of money, I didn't want to  
7 have to pay them interest on one or two days, which would be  
8 hard to figure out and very burdensome.

9 Q. Was this something that was difficult to get done, the  
10 signing collection rights to Mitsubishi?

11 A. It seemed to take a long time, therefore, it seemed to be  
12 difficult.

13 Q. Who was responsible? Who, with F.G.G., was responsible for  
14 getting the collection rights assigned to Mitsubishi?

15 A. Marco was getting the collection rights.

16 Q. Okay. And what, if anything, did he tell about the status  
17 of assigning the collection rights?

18 A. You know Marco didn't have any problem with the concept of  
19 assignment of collection rights, but he just said it was coming,  
20 coming, coming. We should have it very soon.

21 Q. Okay. I'm going to ask you to take a look at Government  
22 Exhibit 52. Tell me when you're done.

23 A. Okay.

24 Q. Do you recognize this?

25 A. I do.



1 Q. Okay. Is this an e-mail from Mr. Delgado to John Adams,  
2 Mr. Gireud and to you?

3 A. Yes, ma'am.

4 Q. Okay. And is the date of the e-mail, March 26th, 2010?

5 A. Yes, it is.

6 Q. Okay. So I'm going to ask you to read starting at the  
7 beginning and I'll tell when you to stop.

8 A. Okay. John and Fernando, attached please find format for  
9 wire transfer instructions as required by C.F.E., BancoMext and  
10 the investor. This needs to be filled out by you exactly as  
11 provided by the format and returned to me ASAP, so I can  
12 finalize assignment of collection rights and secure issuance of  
13 first payment by due date.

14 Q. Okay. I'm going to stop you there. When you received this  
15 e-mail on March 26th, 2010, did you know that Marco Delgado had  
16 already secured issuance of the first payment on March 9th,  
17 2010, into an offshore account into the Turks and Caicos  
18 Islands?

19 A. No, I didn't know that.

20 Q. Can you continue reading?

21 A. Also include the physical address of your banks and  
22 respective companies. Assigned payment will be issued directly  
23 by -- to M.P.S.E. [sic] by trust. My payment will be issued to  
24 F.G.G., who will then wire it to my account within 14 hours of  
25 receipt. Please note I did not request assignment of my fees so

1 as not to undermine my ability to push for expedited payment and  
2 the assignment of collection rights. So please assist me in  
3 securing payment of my fees as soon as practical. The bank will  
4 also cover its closing cost. I will provide estimates the  
5 minute I receive them and approved by the actual trust.

6 Q. So there you go.

7 All right. Where were the payments to F.G.G. supposed  
8 to go under the prime contract between F.G.G. and C.F.E.?

9 A. I believe into a Wells Fargo bank account.

10 Q. And who -- who is the account holder of that account, if  
11 you know?

12 A. Fernando Gireud. F.G.G., I believe the account was in  
13 F.G.G.'s name, but the Fernando Gireud is the sole member of  
14 F.G.G., so...

15 Q. Okay. Were you a signatory on F.G.G.'s account?

16 A. No.

17 Q. Why not?

18 A. Well, I do not want -- in my capacity, I do not want that  
19 kind of financial responsibility.

20 Q. And at some point in time, did you come to learn that the  
21 monies that were being paid from C.F.E. to F.G.G. were not going  
22 into F.G.G.'s account?

23 A. I did come to learn that.

24 Q. Okay. Can you tell us about that?

25 A. Well, Fernando obviously told me that the monies were not

1 being received and --

2 MS. FRANCO: Objection, Your Honor, strike that as  
3 to -- it's hearsay.

4 THE COURT: Sustained.

5 A. I found out that the monies were not being received and  
6 were in that account and were going into another account.

7 BY MS. ARREOLA:

8 Q. Okay. And after you found out that the monies were going  
9 into another account, what actions if any did you take?

10 A. I tried to contact the firm that was listed as the account  
11 where the monies were being received and that the monies were  
12 coming into the F.G.G. account from a Turks and Caicos account.

13 Q. Okay. And who, if anybody, was present when you tried to  
14 contact that firm?

15 A. Fernando was present.

16 Q. And did you do this by phone?

17 A. By phone, yes, ma'am.

18 Q. And were you successful in reaching anybody at the firm?

19 A. Eventually I reached a live person at the firm and my  
20 inquiry was is this an F.G.G. account or who's the owner of this  
21 account. And I was told that the only person --

22 MS. FRANCO: Objection, Your Honor.

23 THE COURT: Sustained.

24 MR. ARREOLA: Your Honor, the government offers this  
25 just to explain what happened next. There's a subsequent

1 conversation with Mr. Delgado about this.

2 THE COURT: So what's its relevance beyond its truth?

3 MR. ARREOLA: To explain the next step taken and  
4 Mr. Delgado response.

5 THE COURT: Ask him what the next step is.

6 BY MS. ARREOLA:

7 Q. As a result of the information given to you by somebody at  
8 Skippings and Rutley, did you confront Marco Delgado.

9 A. I did.

10 Q. And at the time that you called this law firm, Skippings  
11 and Rutley, was F.G.G.'s own er present with you?

12 A. Yes, ma'am.

13 Q. And would the law firm give either you or F.G.G.'s owner  
14 any information about the account?

15 A. They would not.

16 Q. Okay. So you mentioned a moment ago that you confronted  
17 Marco Delgado about the account. Where were you when you  
18 confronted him?

19 A. I think we were -- we often met at Barrigas -- Barrigas?  
20 Barrigas, and we had the conversation there.

21 Q. And who was present?

22 A. Marco and I.

23 Q. What did you say and what did he say?

24 A. Basically -- I'm paraphrasing, I am not quoting -- but what  
25 the heck are you doing diverting that money that's supposed to

1 go to F.G.G. into another -- into this offshore account? And he  
2 said that he had the right to do that, because he had a power of  
3 attorney associated with the project, and what are we going to  
4 have for breakfast? It was very dismissive.

5 Q. Did he give you any reason for why the money was being sent  
6 to the Turks and Caicos?

7 A. He did not trust Fernando to handle the money correctly.

8 Q. That's what he told you?

9 A. Yeah, that's what he told me.

10 Q. How long was this meeting?

11 A. It was very short. I was very mad.

12 Q. And how long was it?

13 A. Two or three minutes.

14 Q. Okay. Was Marco Delgado, was he an owner OF F.G.G.?

15 A. No.

16 Q. Was he an officer or director?

17 A. Not to my knowledge, no.

18 Q. Okay. So who was the only owner of F.G.G.?

19 A. F.G.G. is a single member LLC, so Fernando Gireud is the  
20 only owner.

21 Q. Now you said Marco Delgado mentioned to you a power of  
22 attorney during that Barrigas restaurant meeting and did you  
23 then go -- after the meeting, did you then go look for this  
24 power of attorney?

25 A. Yes.

1 Q. Were you able to find it?

2 A. Yes.

3 Q. And then I'll ask you to take a look at Government  
4 Exhibit 4. Can you take a look at that and tell me if you  
5 recognize it?

6 A. I do. I've seen this document, yes.

7 Q. Okay. And does this document contain any language  
8 authorizing Marco Delgado to change the account into what's  
9 F.G.G.'s monies being deposited?

10 A. In my mind it does not.

11 Q. Did you confront Marco Delgado about the language in the  
12 power of attorney.

13 A. Yes, we discussed it aggressively.

14 Q. And what did you say and what did he say?

15 A. I said that I don't believe this gives you the authority to  
16 divert funds from F.G.G. and he told me, well, yeah it does.

17 Q. Pardon?

18 A. Yes, it does. I -- his -- his stance was, yes, it does  
19 give me authority to do that.

20 Q. Okay. Now once you realize that the account had been  
21 changed, did you and Fernando Gireud take any action to change  
22 it back?

23 A. Yes. We went to Mexico to try and get the authority to  
24 move this money to another account withdrawn.

25 Q. Okay. And did you participate in any meetings?

1 A. I did not. I went down there with Fernando, but I was told  
2 not to attend the meeting.

3 Q. Okay. So do you know why you were told -- who told you not  
4 to attend the meeting?

5 A. Fernando.

6 Q. And do you know why he told you not to attend the meeting?

7 A. I think they probably thought that I would loose my temper  
8 and be very threatening to the people that had done -- that  
9 changed this, so...

10 Q. Okay.

11 A. And then also so that the meeting could be in Spanish  
12 without, you know, somebody having to translate for my benefit.

13 Q. Okay. Now did you accompany Mr. Gireud to any of the  
14 meetings even if you didn't sit in on them?

15 A. I did. One of the meetings was at a mall. I don't know  
16 the name of the mall. It was a restaurant in the mall. It  
17 sounds like I'm a child, but I was told to wait outside and wait  
18 while the meeting was taking place.

19 Q. Now regarding -- now you're an attorney. You're a licensed  
20 attorney. What are IOLTA accounts?

21 A. An IOLTA account is a trust account that an attorney has --

22 MS. FRANCO: Objection, Your Honor. Expert testimony.  
23 The jury wouldn't know about an IOLTA.

24 MR. ARREOLA: He was counsel for F.G.G. and the  
25 accounts of F.G.G. are at issue in this case, so the government

1 submits that it's proper for F.G.G.'s own counsel to testify  
2 about accounts and attorney accounts.

3 THE COURT: Well, I think you have to have specialized  
4 knowledge to know what they're used for. He can tell us what  
5 IOLTA stands for, because it's an acronym that doesn't take any  
6 kind of expertise. But I don't know if anything beyond that  
7 is -- would be in the common knowledge of the regular human  
8 being. It is something, the specialized knowledge that lawyers  
9 know.

10 BY MS. ARREOLA:

11 Q. All right. So I'm going to ask you to take a look at  
12 Government Exhibit 58. And can you take a moment to look at it  
13 and tell me if you recognize it?

14 A. Sure. Okay.

15 Q. Do you recognize this e-mail chain?

16 A. I got the first part. The other part is moving relatively  
17 quickly and I can't read it fast. I recognize this first part,  
18 yes.

19 Q. So I'm going to read from this and then ask you a question.

20 A. Okay.

21 Q. Is this an e-mail from Mr. Gireud to Hector Ponce,  
22 Mr. Delgado and to you?

23 A. Yes, ma'am.

24 Q. And was the date sent April 5th, 2010?

25 A. Yes, ma'am.



1 Q. So I'm going to go ahead and read and ask you a question.

2 Hector, I just answered Kevin's e-mail and I also  
3 replied to him last week. And as you know, I talked to you last  
4 week several times -- I'm sorry.

5 I just answered Kevin's e-mail and I also replied to  
6 him last week. And as you know I talked to you last week  
7 several times. I do not have control of what C.F.E. is going to  
8 pay me or you. As you know it is coming from fideicomiso and  
9 the C.F.E. not me.

10 Second, Marco sent you and John an e-mail with some  
11 info -- I won't read what's in parenthesis -- dated March 26th,  
12 2010, where he asks me and M.P.S.A. for wire instruction for the  
13 payment, which I went directly into my bank and asked them to  
14 fill them for me. I even called you and asked you to carefully  
15 review this document, Bancomext and the investor requested this  
16 document.

17 Okay. I'm going to skip a little bit further down.

18 At the end of the day, C.F.E. and Bancomext are the  
19 ones that are shipping the monies, not F.G.G. And also since  
20 you requested direct payment to you from Bancomext, I do not  
21 have control of payments.

22 In this e-mail is Mr. Gireud responding to an inquiry  
23 from Hector Ponce about where the money is?

24 A. Yes.

25 Q. Okay. And was the date on this e-mail April 5th, 2010?

1 A. Yes, ma'am.

2 Q. And in response to this e-mail, did Mr. Delgado notify you  
3 guys that he already had in his account since March 9, 2010,  
4 \$20 million?

5 A. Did he notify us? No, he did not.

6 Q. And I should have started at the e-mail at the bottom, but  
7 I'm going to go ahead and get to that right now.

8 At the bottom is an e-mail from Mr. Ponce to  
9 Mr. Gireud, correct?

10 A. Mr. Ponce? Yes.

11 Q. And the date sent was April 3rd?

12 A. Yes.

13 Q. Okay. So I'm going to go ahead and read from that.

14 Did your money arrive in your account? Yesterday, you  
15 mentioned you had been told 1 million, but if the payment from  
16 C.F.E. is 15 million and M.P.S.A.'s is 14-and-a-half-million,  
17 how could you get 1 million?

18 Was it your understanding at this point and time that  
19 C.F.E. was going to be paying \$15 million to F.G.G. instead of  
20 \$20 million?

21 A. I'm not sure. I'm not sure if that was my understanding at  
22 that time.

23 Q. Well, we talked about the revised payment schedule. Do you  
24 recall that?

25 A. Right, yeah.

1 Q. And under the revised payment schedule, what was the amount  
2 that C.F.E. was going to be paying F.G.G.?

3 A. Correct. \$15 million.

4 Q. Okay. And in response to this e-mail, did Mr. Delgado  
5 respond to you and indicate and notify you that in fact C.F.E.  
6 had in fact paid \$20 million and not \$15 million to F.G.G.?

7 A. Oh, no.

8 Q. Okay. I'd ask you to take a look at Government Exhibit  
9 119. Can you tell me if you recognize it?

10 A. Yes.

11 Q. Okay. Is this an e-mail from you to Mr. Gireud and  
12 Mr. Delgado?

13 A. Yes, ma'am.

14 Q. And is the date sent April 8th, 2011?

15 A. Yes.

16 Q. So this is almost a year after the first payment from  
17 C.F.E. to F.G.G.; is that correct?

18 A. Apparently, yes.

19 Q. Okay. So I'm going to go ahead and read a paragraph from  
20 this and ask you a question.

21 C.F.E. is 2,000 -- \$2 million delinquent with the  
22 second payment, which according to a letter from C.F.E. on  
23 C.F.E. letterhead has been moved to the third payment. That has  
24 got to be the most unbelievable, stupidest thing I ever heard.  
25 It certainly was the stupidest thing counsel had heard. It's

1 suggested notice be sent to C.F.E. in order to preserve F.G.G.'s  
2 right.

3 Why are you writing that C.F.E. was \$2 million  
4 delinquent with the second payment?

5 A. That's way was told.

6 Q. And what was your understanding of what the payment was  
7 supposed to be?

8 A. Well, first it was 20 and 12, but then I guess it got  
9 changed to 15 and 7; is that right?

10 Q. Okay. And you were under the understanding that the second  
11 payment had been changed from 12 million to \$7 million; is that  
12 correct?

13 A. That's what I recall from the previous document.

14 Q. Okay. And this is April 8th, 2011?

15 A. Uh-huh.

16 Q. Were you aware that almost one year earlier on July 6th,  
17 2010, C.F.E. had paid the full amount of the second payment,  
18 \$12 million, to an offshore account in the Turks and Caicos  
19 Islands?

20 A. No.

21 Q. In response to this e-mail, which you sent to both  
22 Mr. Gireud and Mr. Delgado, did Mr. Delgado write to you to say,  
23 hey, Mace, you're wrong; C.F.E. actually made the full payment  
24 of \$12 million almost a year ago?

25 A. No. And you understand, I was in charge of transportation,

1 and we desperately needed to put down a transportation deposit  
2 or we were not going to get the gear over there.

3 Q. So I'm going to go ahead and read the next paragraph, and  
4 ask you a question about transportation in a moment, but I want  
5 to read you the next paragraph.

6 Regarding the pledge and the he said, she said bull,  
7 he would need to examine the letter from John Adams authorizing  
8 said pledge. The pledge itself, the initial L.C., which was  
9 posted to satisfy contract terms, the contract between F.G.G.  
10 C.F.E. and F.G.G., M.P.S.A. and all correspondence thereafter.

11 I have gathered this with the exception of those items  
12 I did not have. Don't expect me to fight this battle without  
13 all of the information and documentation.

14 At this time April 8th, 2011, had you seen a copy of a  
15 pledge?

16 A. No.

17 Q. Had you seen a letter from John Adams authorizing such  
18 pledge?

19 A. No.

20 Q. Had you seen an L.C.?

21 A. No.

22 Q. What documents -- it says you indicated here I have  
23 gathered this with the exception of those items I do not have.

24 Which items had you gathered?

25 A. The contract between F.G.G. and C.F.E., F.G.G.-M.P.S.A, and

1 probably most burdensome, all of the correspondence, all of the  
2 e-mails.

3 Q. Okay. And had you gathered anything which in any way  
4 authorized F.G.G. to pledge Mitsubishi's equipment?

5 A. No.

6 Q. How long after this -- I withdraw that.

7 In response to this e-mail in which you copied or sent  
8 to Mr. Delgado, did he ever provide you with a copy of the  
9 pledge agreement or the John Adams' letter?

10 A. No, ma'am.

11 Q. Did he provide you with any letter of credit?

12 A. No.

13 Q. I'm going to ask you to take a look at Government Exhibit  
14 120. Do you recognize this?

15 A. Yes, ma'am.

16 Q. Is this Mr. Delgado's response to the e-mail that we just  
17 looked at, the e-mail about the delinquent second payment and  
18 the pledge?

19 A. Yes, ma'am.

20 Q. Can you read what Mr. Delgado wrote to you?

21 THE COURT: It's not in evidence.

22 MR. ARREOLA: Pardon?

23 THE COURT: It is not in evidence.

24 MR. ARREOLA: Oh, the government offers what's been  
25 marked for identification as Government Exhibit 120. May we

1 publish, Your Honor?

2 THE COURT: Ms. Franco.

3 MS. FRANCO: Just a moment, Your Honor.

4 THE COURT: You said 120, right?

5 MS. FRANCO: No, objection.

6 THE COURT: GX-120 is admitted.

7 MR. ARREOLA: May we publish, Your Honor?

8 THE COURT: Yes, ma'am.

9 BY MS. ARREOLA:

10 Q. I'm sorry. I didn't realize it wasn't admitted. I'm going  
11 to go ahead and look at it again so the jury can see it.

12 Mr. Miller, at the bottom of this e-mail, is this the  
13 e-mail that we had looked at earlier where you were writing to  
14 Mr. Delgado and Mr. Gireud about the C.F.E. being \$2 million  
15 delinquent and about the pledge?

16 A. Yes, ma'am.

17 Q. Okay. And at the top of this e-mail, is that Mr. Delgado's  
18 response to both you and Mr. Gireud?

19 A. Yes.

20 Q. And the date sent as April 8th, 2011?

21 A. Yes.

22 Q. Okay. So you just notified Mr. Delgado about the  
23 delinquency and the pledge. And can you read what he wrote to  
24 you?

25 A. Counsel needs to be retained ASAP.

1 Q. I'm going to ask you to take a look at Government Exhibit  
2 131. Is this an e-mail from you to Mr. Gireud and to  
3 Mr. Delgado?

4 A. Yes, ma'am, it is.

5 Q. And was the date October 11th, 2011?

6 A. Yes, ma'am.

7 Q. Do you recognize this letter or this e-mail?

8 A. I do.

9 MR. ARREOLA: Your Honor, the government offers what's  
10 been marked as Government Exhibit 131.

11 THE COURT: Ms. Franco?

12 MS. FRANCO: No, objection, Your Honor.

13 THE COURT: GX-131 is admitted.

14 MS. ARREOLA: May we publish, Your Honor?

15 THE COURT: Yes, ma'am.

16 BY MS. ARREOLA:

17 Q. Okay. I'm going to ask you if you can read the first  
18 paragraph of Government Exhibit 131, what you wrote to  
19 Mr. Gireud and to Mr. Delgado.

20 A. Okay. Gentlemen, given the content of the latest e-mail  
21 from M.P.S.A. concerning transportation, it appears we are at a  
22 crossroads. Two viable, capable transportation companies have  
23 been contacted, both expect a significant upfront payment which  
24 appears we don't have. If the project is going to halt from  
25 F.G.G.'s perspective, I think it's best to discuss the exit



1 strategy so to speak.

2 Q. Okay. Why are you talking about an exit strategy? What is  
3 your reference to exit strategy mean?

4 A. From what I've been told, F.G.G. didn't have any money to  
5 fulfill its obligation, specifically, that gear was never going  
6 to get over there. Taking this type of gear across the ocean,  
7 and this stuff is in Japan and it's in France, is unbelievably  
8 expensive; 8, 10, \$12 million. F.G.G. did not have the money to  
9 fulfill that obligation. We were going to be in default because  
10 we couldn't get the gear over there.

11 Q. Did you talk to Marco Delgado about not having money to pay  
12 for transportation?

13 A. I said that every day, yes, to Marco and everybody, yes.

14 Q. And what was Marco's response to you when you said that  
15 money was needed for transportation?

16 A. Not really his problem.

17 Q. I'm going to ask you to take a look at the next sentence  
18 and go ahead and read and we'll follow a long.

19 A. You want me to read it?

20 Q. Yes, please.

21 A. First, if a breach letter is sent to F.G.G., it should be  
22 followed immediately with a request for accounting from the  
23 Mexican fiduciary. I personally have no answer as to how F.G.G.  
24 is so deficient regarding cash to operate.

25 Q. Can you stop there?

1           So you mentioned that F.G.G. didn't have any money for  
2 transportation. What was F.G.G.'s financial situation, in  
3 general, at that time?

4       A. My understanding is F.G.G. didn't have any money.

5       Q. And what --

6       A. I will say this. I didn't have access to F.G.G.'s account,  
7 so -- but I was being told there was no money.

8       Q. Okay. So can you go ahead and continue reading?

9       A. The first payment was offset by large payments to M.P.S.A.  
10 and our consulting firm. That being said, we still should have  
11 a significant cash balance, but we're charged for an L.C., which  
12 currently does not exist as a pledge was substituted, a pledge  
13 which does not cost money.

14           The second payment, which was supposed to be \$12  
15 million, has miraculously been reduced to 10 million, according  
16 to a letter from an individual who was nothing to do with  
17 payments.

18           I have been told last week that the deficient  
19 \$2 million will be spread over the next few payments.

20       Q. I'm going to ask you to stop there. You've just mentioned  
21 that F.G.G. -- you don't understand how F.G.G. has no money.  
22 And I'm going to scroll down and ask you to read what Marco's  
23 response was to your e-mail. Can you read the last sentence of  
24 your e-mail and we'll scroll down?

25       A. I suggest we have a face-to-face meeting to discuss.

1 Please advise as to availability.

2 Q. Okay. Now you've just mentioned the cash flow situation,  
3 you mentioned the letters of credit and the pledge, and what is  
4 Marco's response to you?

5 A. Any time after Thursday works for me.

6 Q. Did he respond to you verbally about the pledge or the  
7 letters of credit or having money in the Turks and Caicos  
8 account?

9 A. No.

10 Q. Okay. I'm going to now ask you to take a look at what's  
11 been marked for identification as Government Exhibit 132.

12 THE COURT: Ms. Arreola?

13 MS. ARREOLA: Yes, sir?

14 THE COURT: Mr. Miller, are you available on Monday?

15 THE WITNESS: I'll make myself available. I live in  
16 El Paso, so I'll make myself available.

17 THE COURT: All right.

18 Can we go ahead and break for the evening and come  
19 back with Mr. Miller on Monday?

20 MR. ARREOLA: Yes. This is a good place to stop.  
21 Thank you.

22 THE COURT: Ladies and gentleman of the jury, we're  
23 going to recess for the weekend. Please remember the  
24 instructions I gave you on Monday about not discussing the case  
25 amongst yourself or anyone outside the jury. See you back on

DIRECT MILLER

276

1 Monday morning.

2 COURT SECURITY OFFICER: All rise.

3 (Proceedings conclude at 6:00 p.m.)

4 \* \* \*

5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
KATHLEEN A. SUPNET, CSR

\* \* \* \* \*

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter. I further certify that the transcript fees and format comply with those prescribed by the Court and the Judicial Conference of the United States.

Signature: /S/KATHLEEN A. SUPNET  
Kathleen A. Supnet, CSR

December 31, 2018  
Date

KATHLEEN A. SUPNET, CSR